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Los Angeles' Cornfield: An Old Blueprint For New Greenspace

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Los Angeles' Cornfield: An Old Blueprint for New Greenspace

Paul Stanton Kibel*

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*First as a blessing, then a monster, and, at last, a nullity.*¹

I. INTRODUCTION: UPRIVER DOWNTOWN

It is a site known by many names—the Cornfield, the Cornfields, the Chinatown Cornfield, the Chinatown Yards. No cornfields are found there today. Before California became a state, however, there were cornfields on the site. These cornfields were irrigated by water from the nearby Los Angeles River, known then as the Rio de Porciúncula.

Today the Cornfield is a vacant forty-acre parcel located within a triangle formed by the Hollywood Freeway on the south, the Pasadena-Harbor Freeway on the northwest, and the Los Angeles River on the east.² To be more geographically precise, it is the narrow crescent-shaped lot located between North Broadway Street and North Spring Street and immediately southwest of the North Broadway Bridge.³ Just above the site's Broadway Street bluffs lies

1. PATT MORRISON & MARK LAMONICA, *RIO LA: TALES FROM THE LOS ANGELES RIVER* 22 (2001).

2. MARCO CENZATTI ET AL., *CORNFIELD OF DREAMS: A RESOURCE GUIDE OF FACTS, ISSUES, & PRINCIPLES* §3 at 83 (report prepared by UCLA Urban Planning Department and Occidental College's Urban and Environmental Policy Institute) (June 2000) (on file with author).

3. Jan Chatten-Brown & William F. Delvac, *A River Tale—The Cornfield to Taylor Yard: From Industrial Development Plans to State Parks' Acquisition*, CAL. LAND USE L. & POL'Y REP., Oct. 2002, at 3.

Chinatown.⁴ To the east of the Cornfield the concrete-encased Los Angeles River makes its way towards the Pacific. Beyond the river is William Mead Homes—the oldest public housing project in the city.⁵ To the west are historic Union Station, downtown's skyscrapers, and Olvera Street—the site of Los Angeles' original eighteenth century pueblo.⁶

The Cornfield is vacant now for two reasons. First, the railyard on the site was shut down in the early 1990s, its tracks and switching stations removed.⁷ The railyard, first established by the Southern Pacific Railroad in the 1870s and later operated by Union Pacific Railroad, was no longer needed due to declining rail usage.⁸ Second, a reindustrialization project for the Cornfield proposed in the late 1990s—calling for more than 900,000 square feet of new manufacturing and warehouse space on the site—was derailed.⁹ The project was derailed through a combination of effective community political organizing, aggressive litigation, an innovative settlement agreement, and the timely passage of a public bond measure.

Although vacant, big plans are in the works for the Cornfield. As a result of the events alluded to above, the Trust for Public Land (a land conservation group) purchased the Cornfield in 2001, and then sold the property to California State Parks, an agency of the State of California. Once the toxic conditions caused by the site's century-long use as a railyard are remediated, the Cornfield will become a public park in downtown Los Angeles.

The tale of how the Cornfield emerged as parkland is revealing on several levels. It provides a window onto the past, helps explain why Los Angeles developed where it did, and reveals the city's complex historical relationship with the river that runs through it. The tale of the Cornfield also highlights recent efforts to remedy the lack of public parks in downtown Los Angeles, and to restore the Los Angeles River's connection to the city. An examination of the Cornfield further reveals strategies that may be useful to others seeking to reclaim former urban industrial property as parkland.

4. *Id.*

5. Robert Garcia, *Building Community: Lessons from the Urban Parks Movement in Los Angeles* 7 (2001) (unpublished report by the Center for Law in the Public Interest) (on file with author).

6. *Id.*

7. Chatten-Brown & Delvac, *supra* note 3, at 3.

8. CENZATTI ET AL., *supra* note 2, §3 at 40.

9. Chatten-Brown & Delvac, *supra* note 3, at 3-4.

This article begins with an historical survey of the Los Angeles River. Next, it considers the implications of a comprehensive 1930 park plan for Los Angeles. The 1930 plan was suppressed before it was published but is now being revived.¹⁰ The article then turns to the Cornfield, and reviews the activities and people associated with the site. The section that follows recounts the opposition to the Cornfield's reindustrialization, as well as the organizing and lawsuit that ultimately stopped the proposed manufacturing-warehouse project. The article goes on to deconstruct the deal that initially enabled the Trust for Public Land, and later the State of California, to acquire the Cornfield. The next section evaluates the politics involved in designing the new Cornfield state park. Lastly, the article identifies what lessons the Cornfield may hold for Los Angeles, for California, and for the rest of the nation.

II. THE STRANGE PATH OF THE LOS ANGELES RIVER

Growing up in Los Angeles, I found the location of downtown to be an enigma. Located far inland from the coast, it was removed from the ports near San Pedro Bay. The city's older neighborhoods—such as Pasadena, Burbank, and Hollywood—were near downtown, yet they seemed geographically illogical. Downtown Los Angeles and its surrounding neighborhoods were denied the scenery, cooling breezes, beaches, and ocean views offered by the Pacific, as well as proximity to the ocean's food supply. Considered in the context of its current landscape, the origins of the city made no sense.

Other modern Los Angeles residents have been similarly puzzled. As Blake Gumprecht notes in his recent book *The Los Angeles River: Its Life, Death and Possible Rebirth*:

Why, I had wondered, wasn't [Los Angeles's historic center] on the ocean? Or at the base of some impressive mountain? Why was it there on the edge of a plain, fifteen miles from the Pacific Ocean, ten miles from the San Gabriel Mountains, with no immediately apparent advantages of location?¹¹

The answer to both Gumprecht's question and mine lay in the network of deep concrete culverts that cuts through the city. The main stem of this network runs from north of downtown, south-

10. CENZATTI ET AL., *supra* note 2, §2 at 99-100.

11. BLAKE GUMPRECHT, *THE LOS ANGELES RIVER: ITS LIFE, DEATH AND POSSIBLE REBIRTH* 4 (1999).

ward to Los Angeles' harbor.¹² Other stems travel along the northern base of the Santa Monica Mountains in the San Fernando Valley and west from downtown through Ballona Creek to Santa Monica Bay.¹³ These concrete culverts—nearly waterless during dry periods yet a rushing torrent during storms—are what remains of the Los Angeles River. And it is the river that explains both why and where the city of Los Angeles exists.¹⁴

The ocean may provide fish, but people cannot drink seawater, nor can they irrigate crops with it. The greater Los Angeles area is vast, but its natural supply of usable surface freshwater is not. In fact, in the region comprising the San Fernando Valley and the Los Angeles Basin, there was initially only one reliable year-round source of above-ground freshwater.¹⁵ This source was located in the Glendale Narrows, a depression wedged between the eastern edge of the Santa Monica Mountains and the western edge of the Verdugo Mountains, near today's Elysian Park.¹⁶ Rainwater falling on the floor of the San Fernando Valley and runoff from the northern slopes of the Santa Monica Mountains converged in the underground of the valley's southern end and then traveled east.¹⁷ This subterranean stream remained pinned against the northern base of the Santa Mountains until it reached the Glendale Narrows.¹⁸ There it was pushed up to the surface and, redirected by the base of the Verdugo Mountains, turned sharply south.¹⁹

12. CAL. COASTAL CONSERVANCY, WETLANDS OF THE LOS ANGELES RIVER WATERSHED: PROFILES AND RESTORATION OPPORTUNITIES 2 (2000) [hereinafter COASTAL CONSERVANCY WETLANDS REPORT].

13. GUMPRECHT, *supra* note 11, at 229 (map entitled Flood Control Features-Los Angeles River Drainage Area).

14. MORRISON & LAMONICA, *supra* note 1, at 21 ("And yet it was a river, and still is, somewhere in there. Without it, there would be no Los Angeles."); *see also* GUMPRECHT, *supra* note 11, at 6-7:

The evolution of the river can also tell us much about greater Los Angeles, not only because the town from which it grew could not have existed without the river, but also because the river's evolution paralleled the growth of Los Angeles from village to city to metropolis. The story of the Los Angeles River is a frequently remarkable, sometimes bizarre, and ultimately tragic tale of how an often overlooked element of the geography of one of the world's great cities shaped its development and was, in turn, remade in its image.

15. Alan Loomis, *The Los Angeles River: Past, Present, and Possibilities* (2000) (unpublished graduate thesis, Southern California Institute of Architecture) (abbreviated exhibit version of thesis available at <http://www.deliriouslaw.net/lareiver.about.htm>).

16. *Id.*; GUMPRECHT, *supra* note 11, at 15-16.

17. GUMPRECHT, *supra* note 11, at 15-16.

18. *Id.*

19. *Id.*

After passing through the Glendale Narrows and then passing near what is now downtown Los Angeles, the course of this surface stream became wilder as it entered the expansive Los Angeles plain. Due to its seasonal nature, it did not develop a deep riverbed or high banks, leaving it free to pursue the path of least resistance.²⁰

For a time, the main stem of the river headed south towards San Pedro Bay. However, in 1825 it carved a new westerly channel towards Santa Monica Bay along what is now known as Ballona Creek.²¹ Plowing its way through today's Boyle Heights, it tore away earth and stone leaving behind white cliffs that locals named Paredon Blanco: the big white wall.²² Joined by waters coming off the southern slopes of the Santa Monica Mountains, the river frequently overflowed its low banks to create a vast marshland called Las Cienegas, or "the swamps."²³ La Cienega Boulevard, one of Los Angeles' major streets, is a testament to this lost marsh.²⁴ Sometimes the river made it all the way to the ocean at what is now Playa Del Rey.²⁵ Other times it ended short of the Pacific.²⁶

In 1867, the main stem of the Los Angeles River changed course again.²⁷ A storm drove the river out of its westerly riverbed and forced it into one that the San Gabriel River (another temper-

20. As Gumprecht describes it:

[T]heir channels were shallow and poorly defined. They were incapable of containing the great quantities of water that would rush from the mountains during heavy rains. Sudden storms transformed normally dry streams into raging torrents, often in a matter of hours and sometimes with the sun still shining. Usually placid river overflowed their banks, inundating large areas and occasionally turning portions of the coastal plain into a huge lake. Swirling floodwaters, carrying great loads of rock, sediment, and trees, cut new channel through the earth and dug depressions in the soil. . . .

Id. at 12. For a similar description, see Gary Pitzer, *The Los Angeles River*, *WESTERN WATER*, Nov./Dec. 2003, at 4:

Beguiling in its apparent tranquility most of the year, the river's face would quickly change under the weight of fast-moving storms. Untold volumes of water, loaded with sediment and debris, would surge downhill, seeking the path of least resistance. The once meandering river became a torrent, easily breaching its banks and spreading across the wide, flat terrain.

21. COASTAL CONSERVANCY WETLANDS REPORT, *supra* note 12, at 2.

22. MORRISON & LAMONICA, *supra* note 1, at 35.

23. GUMPRECHT, *supra* note 11, at 17.

24. *Id.*

25. *Id.* at 17.

26. *Id.* at 19 ("[I]t is unlikely that the river carried enough water to reach the sea most of the year.").

27. COASTAL CONSERVANCY WETLANDS REPORT, *supra* note 12, at 2.

amental Southern California waterway) had recently abandoned.²⁸ On its way towards San Pedro Bay, it was joined by other streams—such as the Arroyo Seco—that carried the stormwaters which poured off the jagged, 9000 foot-high San Bernardino Mountains.²⁹ Just as with its westerly flow, sometimes the river's main stem made it to San Pedro Bay, sometimes it did not.³⁰ Just as the river had done on its western course, after 1867 it crested over the banks of its southern course, creating enormous temporary sloughs in what are now the cities of Wilmington and Long Beach.³¹ Even when it reached the ocean, the river's mouth frequently changed location, shifting as silt deposits blocked one channel and forced stormwaters to create another.³²

There was freshwater in Los Angeles' coastal plain, but it was seasonal and uncontained. It was these very conditions that created the ecology of early Los Angeles. It is a lost landscape that bears little visual relation to what we see today. This lost landscape explains Los Angeles' early reputation as a "garden paradise"—a reputation at odds with the water-starved conditions now associated with the region.³³ As Patt Morrison and Mark Lamonica reveal in *Rio LA: Tales from the Los Angeles River*.

The river ambled across a Los Angeles that is unimaginably wetter than it is today—a terrain looking more like England than contemporary Southern California. In the river's broad reach, wetlands and woodlands thrived. Immense stands of sycamore and cottonwood and oak and alder stood like high-rises above tangles of willow and berry brambles and fields of grasses. . . . It wasn't rainfall that made this plain green and lush, but the river, spilling down from the northeast and the northwest onto the long, flat miles of the Los Angeles Basin, where it made itself into a braided lacework of waterways. . . .³⁴

The river's meanderings across the Los Angeles basin may have created a lush landscape, but its wildness did not lend itself to human settlement. In the basin, encampments, farmland, and livestock were at constant risk from flooding. In between the floods, the "lacework of waterways" recounted by Morrison and Lamonica

28. *Id.*

29. *Id.*; GUMPRECHT, *supra* note 11, at 10 fig. 1.1.

30. See COASTAL CONSERVANCY WETLANDS REPORT, *supra* note 12.

31. GUMPRECHT, *supra* note 11, at 17.

32. *Id.* at 19.

33. *Id.* at 2; Pitzer, *supra* note 20, at 4 ("The periodic flooding provided the backdrop for a rich and diverse habitat in which a variety of fish, birds, plants and wildlife thrived.").

34. MORRISON & LAMONICA, *supra* note 1, at 29-30.

consisted largely of shallow muddy pockets of still water that were unsuitable for drinking. Given these conditions, the region's early inhabitants did not locate their villages in the coastal plain. Instead, they wisely chose to settle near the one place where the river's freshwater surface flow was continuous and contained—the Glendale Narrows.³⁵

Just downriver from the Glendale Narrows, the pre-colonial people that inhabited the area that would become Los Angeles (referred to as the Gabrielinos by the Spanish Missionaries) established their village of Yangna.³⁶ The Spanish established El Pueblo de la Reina de Los Angeles near Yangna in 1781.³⁷ After California was seized by the United States from Mexico in the War of 1848, Los Angeles' city center was built near the site of the pueblo.³⁸ The founding of Los Angeles can therefore be traced directly back to the surface freshwater that passed between the Santa Monica and Verdugo Mountains.

In the late nineteenth century, construction in Los Angeles intensified in the areas around downtown.³⁹ By the early twentieth century, the city's built environment had begun to move into the coastal plain.⁴⁰ This development included houses, stores, warehouses, and railroad bridges and tracks. During this period, perceptions of the river began to change in two important ways.

First, in 1913 the Los Angeles-Owens Rivers Aqueduct was completed.⁴¹ The Owens River collected the flow of streams in the Eastern Sierra Mountains, including those from Mount Whitney, the highest peak in the continental United States.⁴² After 1913, the aqueduct replaced the Los Angeles River as the main source of freshwater for Los Angeles.⁴³ As its value as a water supply source diminished, the river's tangible benefits to the city's residents became less clear.

Second, as Los Angeles' built environment intensified and expanded, the seasonal flooding caused by the river became less tolerable. The value of the city's land grew at exponential rates, and

35. Loomis, *supra* note 15.

36. GUMPRECHT, *supra* note 11, at 29, 31, 37.

37. *Id.* at 43.

38. *Id.* at 56-57.

39. *Id.* at 156-67.

40. *Id.*

41. COASTAL CONSERVANCY RIVER WETLANDS REPORT, *supra* note 12, at 6.

42. GUMPRECHT, *supra* note 11, at 105.

43. *Id.*

between 1914 and 1931 the total assessed value of real property in Los Angeles County increased by 2600%.⁴⁴ Yet, the Los Angeles River overflowed its banks in 1914, again in 1916, and then in 1934 with particularly disastrous results.⁴⁵ According to historical accounts, on New Year's Day 1934, a twenty-foot-high wall of water, mud, and rocks came roaring down Verdugo Wash, one of the river's tributaries in the foothills above downtown.⁴⁶ Forty-nine people were killed, forty-five people were never found, two hundred homes were destroyed, four hundred homes were rendered uninhabitable, and eight hundred automobiles were buried in sludge.⁴⁷

Prior to the 1934 flood, there had been piecemeal local efforts to contain the river—a patchwork of dams, earthen levees, and pile-and-wire fences.⁴⁸ After the flooding that year, however, Los Angeles County officials appealed to the federal government for help. With the launch of President Franklin Roosevelt's New Deal in 1933, the timing of this appeal could not have been better. In 1935, President Roosevelt approved \$13.9 million in Works Progress Administration (WPA) funds, to be administered by the United States Army Corps of Engineers, for flood control projects in Los Angeles.⁴⁹ Most of the WPA funds were to be used for channel improvements on the Los Angeles River and its tributaries.⁵⁰

As work pursuant to the initial WPA flood control funds began, however, another flood struck Los Angeles in 1938. The 1938 flood was even more destructive than the one in 1934. As one historian describes it:

Five people were thrown to their deaths in North Hollywood when the Lankershiem Boulevard bridge over the Los Angeles River collapsed. Ten more drowned in Long Beach when a wooden pedestrian bridge just upstream from the river's mouth gave way. Raging waters cut wide new bends for the river on the north side of Griffith Park, washing away huge sections of two major highways. Numerous buildings were destroyed at Warner Bros. Pictures. Houses were floated from their foundations, and some washed into the river. Sewage lines ruptured, threatening public health. Near downtown Los Angeles, thirty thousand

44. *Id.* at 201.

45. *Id.* at 167-71, 183-84, 203-04.

46. *Id.* at 203.

47. *Id.* at 173-98.

48. *Id.* at 205.

49. *Id.* at 206.

50. *Id.*

board feet of lumber, to be used in the construction of a bridge to the new Union Station, was swept into the river and carried to the sea, much of it later washing up on beaches near the river's mouth. A gas main underneath the Ninth Street bridge was ruptured by raging floodwaters, and its fumes were ignited by a passing railroad car. The resulting explosion sent flames shooting into the air, and for a brief time the river actually looked like it was on fire. Throughout the county, ninety-one railroad and highway bridges were destroyed or badly damaged, some of them twisted nearly beyond recognition. . . .⁵¹

Following the 1938 flood, channel improvement took on a more singular purpose—to deepen the river and its tributaries and encase their beds and banks in concrete. This would create a “water freeway” to funnel greater Los Angeles’ stormwaters into one main, paved channel that could swiftly shoot its sporadic torrent into the Pacific Ocean.⁵² Much more than \$13.9 million would be needed to create this water freeway, so in 1941 the United States Army Corps of Engineers sought an additional \$268.2 million for Los Angeles flood control projects.⁵³ Congress granted this funding, pursuant to the 1941 Flood Control Act.⁵⁴ Between 1944 and 1958, Congress would authorize another \$146.5 million for Los Angeles County channel improvements.⁵⁵ By the late 1950s, Los Angeles’ water freeway was complete, and as far as the United States Army Corps of Engineers and most of the city’s residents were concerned, the Los Angeles River ceased to exist.⁵⁶

With the completion of the water freeway, development could now push right up to the river’s banks without fear of flooding. As commercial and industrial buildings crowded up against the concrete gully, the river was degraded from something that needed containment into something that needed to be concealed. As Morrison and Lamonica note:

Los Angeles brags about its beaches and its mountains. On the subject of its river, however, it is silent. Within the river’s banks lies more acreage than Central Park—walled up, fenced off, locked away from human eyes, like the loony aunt hidden in the attic, not to be discussed in front of company.⁵⁷

In the mid-1980s, however, Los Angeles’ hidden river began to

51. *Id.* at 216-18.

52. *Id.* at 221-22.

53. *Id.*

54. *Id.* at 222.

55. *Id.* at 224.

56. *Id.* at 224-32.

57. MORRISON & LAMONICA, *supra* note 1, at 20.

stir, or perhaps more accurately, people began to stir the river.⁵⁸ In 1985, author and poet Lewis MacAdams staged a production at the Wallenboyd Theatre that he described as “the first act of a forty-year artwork to bring the Los Angeles River back to life through a combination of art, politics and magic.”⁵⁹ The Wallenboyd Theatre, which has since been closed, was located in downtown Los Angeles’ flower-and-produce district.⁶⁰ Among other things, the production involved MacAdams in a white suit and white face-paint channeling the ghost of William Mulholland, the former head of the city’s Department of Water and Power responsible for the construction of the Los Angeles-Owens River Aqueduct.⁶¹ Although the production was not well-received by the *Los Angeles Times*’ theatre critic, the response it received from the public prompted MacAdams to found a new organization—Friends of the Los Angeles River (FoLAR).⁶² The creation of FoLAR served as an intellectual and political catalyst for other re-evaluations of the river’s connection to the city.

In 1990, the City of Los Angeles Planning Department released its *Proposed Los Angeles River Greenbelt Corridor Feasibility Study*.⁶³ Prompted by the study, Los Angeles’ Mayor Tom Bradley created a river task force, whose efforts culminated in Los Angeles County’s adoption of a *Los Angeles River Master Plan* in 1996.⁶⁴ Among other things, this plan called for a continuous, fifty-one mile tree-lined bikeway along the river’s banks.⁶⁵

In 1993, the California State Coastal Conservancy (a state agency) published a report entitled *Los Angeles River: Park and Recreation Area Study*.⁶⁶ This study was prepared in response to the state legislature’s request for assistance in identifying beneficial uses of the river, including assessing the river’s potential for open space,

58. Pitzer, *supra* note 20, at 10 (“The river’s role in Los Angeles’ consciousness and political awareness took a noteworthy turn in the mid-1980s, as those who saw it as more than just a forgotten storm drain stepped forward and spoke on its behalf.”).

59. MORRISON & LAMONICA, *supra* note 1, at 115.

60. *Id.*

61. *Id.*; GUMPRECHT, *supra* note 11, at 95-105.

62. *Id.*; see also Tad Friend, *River of Angels—Can Water Again Flow Freely Through L.A.—Without Swamping the City?*, THE NEW YORKER, Jan. 26, 2004, at 45.

63. COASTAL CONSERVANCY WETLANDS REPORT, *supra* note 12, at 113.

64. The River Through Downtown Conference Program 7 (Feb. 28, 1998) (on file with the author) [hereinafter *The River Through Downtown*].

65. Joanna Miller, *Taking Back the River*, LAND & PEOPLE, Fall 2000, at 3, 5.

66. COASTAL CONSERVANCY WETLANDS REPORT, *supra* note 12, at 113.

recreation, and wildlife habitat.⁶⁷

In 1998, FoLAR, the Sierra Club, and the Urban Resources Partnership organized a conference at Los Angeles' Mark Taper Auditorium.⁶⁸ The conference, entitled *The River Through Downtown*, was the result of focus groups held at elementary schools and community centers in the neighborhoods of Cypress Park, Chinatown, Little Toyko, and Boyle Heights.⁶⁹ Following these focus groups, a design team gathered in the Grand Concourse of Union Station to hear further testimony.⁷⁰ This design team included noted Los Angeles architect and planner Arthur Golding, who teaches at the University of Southern California.⁷¹ At *The River Through Downtown* conference, the design team presented a report that summarized the results of the focus group sessions and testimony, and presented proposals for a series of projects to better integrate the Los Angeles River and downtown Los Angeles. In his introduction to the conference report, FoLAR's Lewis MacAdams wrote:

The results of [the design team's] work is being presented to you today. Though it may inspire some and outrage others, it is our sincere hope that these efforts will plant some seeds that will grow into projects that will benefit everyone who lives along, works beside or visits the River Through Downtown.⁷²

In the late 1990s, the California office of the Trust for Public Land (TPL) launched its Los Angeles River Greenway Program.⁷³ TPL is a national, non-profit land conservation group headquartered in San Francisco that employs its expertise in real estate finance to protect land as open space for recreation and wildlife. Since its inception, TPL's Los Angeles River Greenway has worked with local groups, city and county officials, and public agencies to help identify and fund park improvement projects along the river.⁷⁴

Lastly, in 1999 the California legislature enacted the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy

67. *Id.*

68. *The River Through Downtown*, *supra* note 64, at 2.

69. *Id.*

70. *Id.* at 5.

71. *Id.* at A3.

72. *Id.* at 5.

73. Trust for Pub. Land, *Los Angeles River Greenway Program*, available at http://www.tpl.org/tier3_cdl.cfm?content_item_id=5309 (last visited Mar. 10, 2004) (on file with author).

74. *Id.*

Act, which created a new agency, the Rivers and Mountains Conservancy (RMC).⁷⁵ In 2001, RMC co-published a report entitled *Common Ground—From the Mountains to the Sea: Watershed and Open Space Plan for San Gabriel and Los Angeles Rivers*.⁷⁶ This report set forth ecology and recreation-based policy priorities to guide RMC's work.

Although most of the Los Angeles River remains entombed in concrete, the recent flood of initiatives indicates that perceptions of the river have, once again, begun to shift. There is a growing recognition that, despite the best efforts of the United States Army Corps of Engineers, the river still exists. It is an existence that is part history, part ecology and part a vision of what could be.

III. 1930 OLMSTED-BARTHOLOMEW PARK PLAN FOR LOS ANGELES: LEFT ON THE SHELF

As Los Angeles grew, it became clear that something needed to be done about the river. There was disagreement, however, about what this something should be. Not everyone shared the Army Corps of Engineers' vision of a water freeway. Other plans had called for flood control measures that would maintain the river as a living resource.

The most comprehensive alternative vision for the river was presented in 1930, in a document drafted by Frederick Law Olmsted Jr. and Harlan Bartholomew, entitled *Parks, Playgrounds and Beaches for the Los Angeles Region (1930 Olmsted-Bartholomew Park Plan)*.⁷⁷ The *1930 Olmsted-Bartholomew Park Plan*'s primary subject was not so much the Los Angeles River as the need to improve city planning in Los Angeles, although in the authors' minds the two topics were very much intertwined. The plan expanded on previous publications that had also addressed the problem of Los Angeles' dwindling open space, such as Dana Bartlett's 1907 book, *The Better City: A Sociological Study of a Modern City*,⁷⁸ and Griffith J. Griffith's 1910 book, *Parks, Boulevards and Playgrounds*.⁷⁹ Before pub-

75. CAL. PUB. RES. CODE §§ 32,600-621 (Deering 2004).

76. Cal. Res. Agency, Rivers & Mountains Conservancy, *Common Ground—From the Mountains to the Sea: Watershed and Open Space Plan for San Gabriel and Los Angeles Rivers* (Oct. 2001) (unpublished report on file with author) [hereinafter *Common Ground*].

77. GREG HISE & WILLIAM DEVERELL, *EDEN BY DESIGN: THE 1930 OLMSTED-BARTHOLOMEW PLAN FOR THE LOS ANGELES REGION* (2000).

78. *Id.* at 12.

79. *Id.* at 16.

lishing his book, Griffith had donated five square miles to the City of Los Angeles in the late nineteenth century to create Griffith Park.⁸⁰

The *1930 Olmsted-Bartholomew Park Plan* was commissioned by the Los Angeles Chamber of Commerce before the stock market crash of 1929.⁸¹ The authors selected to prepare the report were two of the most respected landscape architects in the United States.⁸² Frederick Law Olmsted, Jr. ("Olmsted Jr."), was a principal with Olmsted Brothers, the Massachusetts firm founded by his father, Frederick Law Olmsted, Sr., the man often credited with inventing the profession of landscape architecture.⁸³ Harland Bartholomew was a principal with Harland Bartholomew and Associates, of St. Louis.⁸⁴

Although Olmsted and Bartholomew were chosen because of their reputations as independent visionary thinkers, the Los Angeles Chamber of Commerce was not prepared to accept the independent vision they produced. The *1930 Olmsted-Bartholomew Park Plan* advocated the creation of parks through the condemnation of extensive tracts of private lands, zoning to prohibit development along the flood-prone river, and the establishment of a powerful new agency to implement this vision.⁸⁵ These recommendations proved too much for the chamber's members, many of whom held interests in lands targeted by the plan for condemnation and hazard zoning, and many of whom feared that the authority of the proposed agency might eclipse that of the chamber itself.⁸⁶ Few

80. *Id.*

81. *Id.* at 2.

82. *Id.* at vii.

83. MORRISON & LAMONICA, *supra* note 1, at 76; WITOLD RBYCZYNSKY, A CLEARING IN THE DISTANCE: FREDERICK LAW OLNSTED AND AMERICA IN THE NINETEENTH CENTURY 23 (1999) ("[Olmsted Sr.] was a landscape architect before that profession was founded.").

84. HISE & DEVERELL, *supra* note 77, at 1.

85. *Id.* at 98-99.

86. *Id.* at 38-39:

More problematic was the dawning realization by many that the comprehensive nature of the plan would, by necessity, create the need for equally comprehensive jurisdictional and supervisory bodies; here lies one of the primary reasons why the report went flat. . . . At this point the Chamber balked. Thinking about an integrated park system, one that incorporated beaches and playgrounds, was one thing. Making the agency that could oversee such a thing was an entirely different matter. . . . In essence, the Chamber feared that the child had become the parent. The planned park board, with its jurisdictional authorities extending to the creation of its own police force, simply scared the Chamber members, many of whom clearly feared that the new body would exert powers over and above the Chamber itself.

copies of the plan were printed, and the Los Angeles Chamber of Commerce did not pursue the plan's recommendations.⁸⁷ At the time, it died a quiet death.

The *1930 Olmsted-Bartholomew Park Plan*, however, has been rediscovered by the new generation pressing for increased urban parkland in Los Angeles and for a restored Los Angeles River. For this new generation, the plan serves both as evidence of Los Angeles' early landscape and a blueprint for what it may become. It is noteworthy that the year after the creation of the Rivers and Mountains Conservancy (the new agency tasked with overseeing the Los Angeles River restoration efforts) saw the publication of the first academic book focused on the Olmsted-Bartholomew plan (the plan that had originally made the case for just such an agency). The University of California Press published *Eden by Design: The 1930 Olmsted-Bartholomew Plan for the Los Angeles Region* in 2000. *Eden by Design* includes a complete reproduction of the 1930 plan, with all of its original drawings and photographs, as well as an introductory essay co-written by Greg Hise, Professor of Urban Planning at the University of Southern California, and William Deverell, Professor of History at the California Institute of Technology.⁸⁸ In their introduction, Hise and Deverell state: "[The *1930 Olmsted-Bartholomew Park Plan*] is a compelling document and readers might well be shocked to see the Los Angeles that was, and then amazed as they begin to imagine the Los Angeles that might have been had the plan been adopted and implemented."⁸⁹

Laurie Olin, of the Philadelphia-based Olin Partnership planning firm, suggests that there is an even deeper connection between the *1930 Olmsted-Bartholomew Park Plan* and recent proposals to re-landscape the Los Angeles River.⁹⁰ According to Olin, who has worked on several Los Angeles park projects, it is not just a question of rediscovering the 1930 plan:

People are still doing things suggested in the Olmsted-Bartholomew report without even knowing it exists The point is, I knew what this drawing of theirs would be like without ever see-

See also CENZATTI ET AL., *supra* note 2, §2 at 99-100 ("[P]olitical opposition squashed it before the plan was even officially published."); MORRISON & LAMONICA, *supra* note 1, at 78 ("Businessmen, the demi-gods of Los Angeles, didn't like it one bit, and saw to it that the plan was filed away and forgotten. Imagine taking all that land off the real estate market.").

87. HISE & DEVERELL, *supra* note 77, at 7.

88. *Id.* at back cover.

89. *Id.* at 52.

90. *Id.* at 304-05.

ing it. It is part of the DNA of landscape architects. Olmsted and Bartholomew called for the Los Angeles River to be developed with an embankment and a parkway, a grand proposal that is still talked about and is still not realized. And they talk especially about the upper reaches of the river alongside Griffith Park. They hammer away at how to use the lower stretches, the middle stretches, and the upper stretches of the Los Angeles River. Today many people are working on similar schemes.⁹¹

As Olin's comments indicate, part of what is so striking about the riverside components of the *1930 Olmsted-Bartholomew Park Plan* is their common sense. They are not so much bold as they are statements of the obvious. They are the logical policy and land-use solutions that any competent, thoughtful landscape architect or planner would have reached.

A. *The Olmstedian Conception of Urban Parks*

A starting point for consideration of the *1930 Olmsted-Bartholomew Park Plan* is the legacy of one of the co-authors' fathers, Frederick Law Olmsted, Sr. ("Olmsted Sr."). The imprint of Olmsted Sr.'s approach to city planning in general, and to urban parks in particular, pervades the plan. Given the influence of Olmsted Sr. on the first generation of American landscape architects and planners, this is to be expected.

Olmsted Sr.'s career as a city planner and park designer spanned from about 1850 to 1900.⁹² He designed many of the most important urban parks in North America, including Central Park in New York City, Mont Royal Park in Montreal, Prospect Park in Brooklyn, and Belle Isle Park in Detroit.⁹³ Much of his work was done in collaboration with his partner, Calvert Vaux, with whom he formed Olmsted Vaux & Co in 1860.⁹⁴

Olmsted Sr. came from an affluent Connecticut family, and, as his career progressed, he became even wealthier.⁹⁵ These circumstances enabled him to travel extensively in remote wilderness and rural areas, such as New Hampshire's White Mountains, Yosemite Valley in California, and the English countryside.⁹⁶ This type of travel, involving vigorous outdoor exercise in rugged terrain, was a

91. *Id.* at 299, 301-02.

92. *See generally* RBYCZYNSKY, *supra* note 83.

93. *Id.* at 155-79, 269-77, 279-84, 321-25, 350-51.

94. *Id.* at 192.

95. *Id.* at 23-27, 29.

96. *Id.* at 40, 86-87, 236-37, 256-59.

constant throughout Olmsted Sr.'s life. Olmsted Sr. was also an active abolitionist prior to the American Civil War and wrote extensively about the corrosive moral and economic effects of slavery.⁹⁷ Olmsted Sr.'s experiences in remote wilderness areas and his egalitarian values found direct expression in his conception of urban parks. New York's Central Park is perhaps the most vivid illustration of the Olmstedian approach.

In the 1850s, the tract of land proposed for Central Park was not green, was not a meadow, and was not a forest. It was a barren, weed-strewn expanse, located just north of the existing city.⁹⁸ Minus the presence of toxic contamination, the site proposed for Central Park was similar in many respects to the current condition of the Cornfield.

As work on Central Park began, Olmsted Sr. made it clear that his intention was not to create a park that would serve as a manicured garden for the city's rich. Instead, he was committed to creating a park that would provide a surrogate wilderness experience for those who could not afford to travel to the wilderness.⁹⁹ He wanted rolling hills, lakes, and woods. As Olmsted Sr. explained to New York City's Park Commission in 1858:

It is one of the great purposes of the Park to supply to the hundreds of thousands of tired workers, who have no opportunity to spend their summers in the country, a specimen of God's handiwork that shall be to them, inexpensively, what a month or two in the White Mountains or the Adirondacks is, at great cost, to those

97. *Id.* at 106-08, 177, 195-97. A few years before the outbreak of the American Civil War, Olmsted Sr. published a book, entitled *The Cotton Kingdom: A Traveler's Observations on Cotton and Slavery in the American Slave States*.

98. RBYCZYNSKY, *supra* note 83, at 166:

Illusion lay at the heart of Greensward [the name of the Central Park design submitted by Olmsted Sr. and Calvert Vaux]. It was all very well to talk of green fields, limpid waters, and sylvan accessories, but aside from the rock outcroppings that Vaux and Olmsted incorporated into their design, the site was not rich in attractive natural features.

99. CENZATTI ET AL., *supra* note 2, §3 at 94-95:

Central Park in New York City is the first and perhaps the best known of American urban parks built in the U.S. in the latter half of the nineteenth century. Designed by Calvert Vaux and Frederick Law Olmsted, the 600-acre park was conceived in the picturesque tradition to give the common people of the city a chance to nurture their bodies and souls in the respite of nature. Large pastoral parks such as Central Park were built to combat the urban environmental problems of the time; overcrowding and disease. There was also a strong moral idealism on the part of the designers, particularly Olmsted, who saw nature as 'improving' the people who went there. Prior to this era the 'pleasure garden' escape into natural scenery had been accessible only to the very wealthy. . . .

in easier circumstances. . . .¹⁰⁰

Not all of the members of the Park Commission embraced Olmsted Sr.'s vision for Central Park, and the Park Commission had ultimate authority over the park's plan and budget. Some commissioners thought the plan was too ambitious and too costly.¹⁰¹ For instance, commissioners Robert Dillon and August Belmont proposed adding a straight, two-mile carriage promenade that would have cut a huge, manicured swath through Olmsted's naturalist landscape.¹⁰² Olmsted defended his design against Dillon, Belmont, and others who questioned his conception of what Central Park should be:

The time will come when New York will be built up, when all the grading and filling will be done, and when the picturesquely-varied rocky formations of the Island will have been converted into foundations for rows of monotonous straight streets, and piles of erect, angular buildings. There will be no suggestion left of its present varied surface, with the single exception of the Park. Then the priceless value of the present picturesque-outlines of the ground will be more distinctly perceived. . . .¹⁰³

Although Olmsted Sr. made some minor design concessions to appease his critics, he convinced the Park Commission to adhere to the basic elements of his initial plan.¹⁰⁴ The Central Park of today is a fair approximation of the illusion of countryside and wilderness that Olmsted Sr. set out to create. The success of Olmsted Sr.'s illusion is testified to by a recent comment to me from my mother, who spent her childhood in New York City. As a very young girl growing up, my mother had assumed that all of Manhattan once looked like Central Park, and that the park was a natural preserve.¹⁰⁵ Olmsted Sr. would have taken my mother's mistaken childhood assumption as high praise.

The scope of Olmsted Sr.'s plan for New York City's Central Park was, geographically and financially, far more limited than Olmsted Jr.'s 1930 plan for Los Angeles. Additionally, unlike Olmsted Jr.'s plan for Los Angeles, Olmsted Sr.'s plan for Central Park did not need to account for the automobile. Notwithstanding these differences, however, there is a clear link between the two plans.

100. RBYCZYNSKY, *supra* note 83, at 177 (quoting from Olmsted Sr.'s comments presented to the Board of Commissioners of Central Park on May 31, 1858).

101. *Id.* at 173.

102. *Id.*

103. *Id.* at 174.

104. *Id.* at 173, 176.

105. Interview with Isabel Ruth Kibel, author's mother (Aug. 2001).

The planning assumptions and landscape objectives remain the same. Reading the *1930 Olmsted-Bartholomew Park Plan*, one hears echoes of the cadence and substance of Olmsted Sr.'s defense of Central Park.

B. *1930 Olmsted-Bartholomew Park Plan*

The subject of the *1930 Olmsted-Bartholomew Park Plan* was all of Los Angeles, not simply the Los Angeles River. The introduction to the plan establishes the tone of urgency that permeates the document:

Among the things that make Los Angeles most attractive are the very ones that are first to suffer from changes and deteriorate through neglect. Especially attractive, and especially subject to destruction, are the opportunities offered in the region for enjoyment of out-of-door life.

But these invaluable assets, now on the verge of disappearing, can easily be preserved by concerted action. They can, indeed, be greatly increased by a systematic care on a scale large enough to match the rapid growth of population. *Continued* prosperity will depend on providing needed parks, because, with the growth of a great metropolis here, the absence of parks will make living conditions less and less attractive, less and less wholesome, though parks have been easily dispensed with under the conditions of the past. In so far, therefore, as the people fail to show the understanding, courage and organizing ability necessary at this crisis, the growth of the region will tend to strangle itself.¹⁰⁶

To ward off this strangulation, the *1930 Olmsted-Bartholomew Park Plan* presented a blueprint that addressed the three defining geographic features of the Los Angeles region: its beaches, its mountains, and its river. With respect to the beaches, Olmsted and Bartholomew warned against private encroachment on the public's right to access and use.¹⁰⁷ For the mountains, Olmsted and Bartholomew cautioned against expansion of residential development in the canyons and foothills of the Santa Monica, San Gabriel, and Verdugo ranges.¹⁰⁸ The plan called for zoning and public acquisition to preserve these existing resources.¹⁰⁹ Yet, the plan's proposal for the Los Angeles River was its most innovative component.

Unlike with the beaches and the mountains, Olmsted and Bartholomew recognized that the main challenge presented by the

106. HISE & DEVERELL, *supra* note 77, at 84.

107. *Id.* at 151-74.

108. *Id.* at 179-92.

109. *Id.* at 151-92.

Los Angeles River was not the preservation of an existing resource. Rather, the challenge lay in developing land uses alongside the river to accommodate the river's fluctuating flows and tendencies to flood. The proposal they came up with was as ingenious as it was simple: construct a buffer of rolling parkland rising up from the river's banks.¹¹⁰ During most of the year, when the river's flow was minimal, these rolling, rising hills would serve as public parks. During those occasions when the river's flow was at its maximum, the rolling parkland would act as a natural catch-basin to retain the river's floodwaters until they percolated back into the ground. The key to this strategy was to discourage and ideally prevent further construction near the river.

Anticipating the resistance that their proposal would engender, particularly among those who stood to benefit from the sale and development of the lands along the river, Olmsted and Bartholomew offered the following economic argument in support of their river recommendation:

To the experienced eye, the slopes of the land show approximately where water must concentrate in times of heavy rainfall Because of the innocent look [land along the river] has in dry weather, it is not as cheap as it ought to be. Between floods [the land along the river] looks pretty good for building purposes to those who never saw what storm water can do in this country. Unsuspecting purchasers, victims of their own ignorance, will fall in the traps laid for them by the sharp practices of ruthless promoters, and such lands will be cut up, sold, and occupied. Unfortunately, the burden of such a wrong development does not fall on the purchaser alone, and scarcely ever on the vendor, but most heavily on the community at large. There is, of course, a remedy, but it requires vision and vigor to apply it.¹¹¹

They continued:

These are, of course, primarily flood-control and water-conservation problems; but there are many opportunities for combining with them, at little extra cost, parks along natural drainage lines on land relatively cheap, and extensive enough for recreation purposes. Such land would have to be acquired only once, yet would serve a double purpose—flood-control use and park use—not conflicting but positively beneficial to each other. The combination of parks with flood control necessities is frequently possible, and wherever practiced it not only will yield a double return on the investment in land but also may lead to an ampler and better solution of both problems at a much lower cost of con-

110. *Id.* at 96-98.

111. *Id.* at 96.

struction than either would separately pay.¹¹²

Olmsted and Bartholomew estimated that the costs of implementing their plan—beaches, mountains, rivers, and all—would cost \$231 million.¹¹³ With the onset of the Great Depression, however, this figure proved too daunting even for the 1930 plan's strongest supporters.¹¹⁴

As it turned out, the cost of the United States Army Corps of Engineers' water freeway far exceeded the cost of Olmsted and Bartholomew's predicted \$231 million plan.¹¹⁵ From the perspective of many Los Angeles residents, however, the water freeway offered a critical advantage over the 1930 plan. While the citizens of Los Angeles would have to cover the costs incurred by Olmsted and Bartholomew's plan, the federal government would pay to pave the river.¹¹⁶

Under these circumstances, the river's fate was sealed. The *1930 Olmsted-Bartholomew Park Plan* would remain the path not taken, and the self-strangling development warned of in the plan's introduction would prove a prescient forecast of the Los Angeles to come.¹¹⁷

C. *Los Angeles' Park-Poor Legacy Since 1930*

The authors of *1930 Olmsted-Bartholomew Park Plan* argued that without park-focused city planning, Los Angeles would soon lack adequate parkland, and that the brunt of this inadequacy would be borne by the city's poorer citizens who lacked the means to travel elsewhere for open space and recreation. This prediction came to pass.

Among major cities, Los Angeles has one of the lowest parkland-to-population ratios in the country.¹¹⁸ Los Angeles has less

112. *Id.* at 97-98 (emphasis removed).

113. Common Ground, *supra* note 76, at 13-14.

114. HISE & DEVERELL, *supra* note 77, at 42-46.

115. GUMPRECHT, *supra* note 11, at 221-24.

116. MORRISON & LAMONICA, *supra* note 1, at 78.

117. Common Ground, *supra* note 76, at 14:

In 1930, L.A. city planners shelved a visionary plan by the son of Central Park designer Frederick Law Olmsted for a wealth of parks and playgrounds in Los Angeles. There would be no Central Park, no Golden Gate Park, no Rock Creek Park in this city. And the residents of Los Angeles have been impoverished ever since by that monumental lack of judgment.

See also Joel R. Reynolds, *A Crossroads at the Cornfield*, L.A. TIMES, June 20, 2000, at 9.

118. Loomis, *supra* note 15; Reynolds, *supra* note 117, at 9 ("Instead of warehouses and industry, the community coalition has proposed an alternative that would create a

than five acres of public parkland per thousand people, compared to the National Recreation and Park Association standard of ten acres per thousand people.¹¹⁹ New York City contains 300 square feet of public parkland for each person, and in Minneapolis there are 756 square feet of public parkland for each person.¹²⁰ There is, in contrast, only 130 square feet of parkland per person in Los Angeles.¹²¹

Furthermore, the public parkland that does exist in Los Angeles is not distributed equally. According to the 2002 *Greenprinting Los Angeles* report by the Trust for Public Land (TPL), "in neighborhoods where a majority of the population has a household income less than \$25,000 or for which a majority of the population is non-white, the density of parkland falls to as low as 0.3 acres per thousand."¹²²

According to a recent article by Robert Garcia, an attorney with the Center for Law in the Public Interest (CLIP) in Los Angeles who represented many of the groups that opposed the Cornfield reindustrialization project, the city's current park situation is not simply a consequence of poor city planning:

The fact that low income people of color disproportionately live in environmentally degraded areas with inadequate access to parks such as in the Cornfield vicinity is not an accident of unplanned growth. It is necessary to connect the historical dots. Los Angeles is the way it is today as a result of a legacy of discriminatory land use planning, restrictive housing covenants, federal mortgage subsidies restricted to racially homogenous neighborhoods, and discriminatory park funding policies and practices. . . .

As Garcia notes, this inequity in access to parkland has been recognized by Los Angeles' political leaders, ranging from former Los Angeles Mayor Richard Riordan to Dallen Zamrzla, a former director of planning and development for the Los Angeles Recreation and Parks Department. Riordan, in an interview with the *Wall Street Journal*, stated his belief that "poorer communities in the inner city have been historically short-changed by City funding formulas. . . . Money is not invested throughout the City based on

badly needed park in a city that has fewer parkland acres per thousand residents than any major city in the country.").

119. TRUST FOR PUB. LAND, *GREENPRINTING LOS ANGELES* (2002) [hereinafter *GREENPRINTING LOS ANGELES*].

120. Loomis, *supra* note 15.

121. *Id.*

122. *GREENPRINTING LOS ANGELES*, *supra* note 119.

need, but is distributed equally among the 15 City Council districts regardless of need." Zamrzla also cited the unfair effects of "ordinances requir[ing] that parks be developed when housing developments go in."¹²³ Such rules have the effect of increasing parkland in new, suburban areas, relative to poor neighborhoods, where little construction occurs.¹²⁴

The policies and trends noted by Garcia and the TPL have been further exacerbated by California's Proposition 13, passed in 1978.¹²⁵ This proposition amended the state constitution to prohibit cities and counties from raising property taxes on a parcel until the parcel is sold, thereby freezing a parcel's property tax assessment during each ownership period even though the parcel's appraised value may increase during this period.¹²⁶ One of the consequences of Proposition 13 has been a marked reduction in the tax revenues of California cities and counties and a corresponding reduction in spending on public services by municipalities.¹²⁷

Parks are one of the public services that have suffered under Proposition 13. Since the proposition's passage, the production of new urban parks in Los Angeles and throughout California has fallen, and there are less local public resources available to maintain existing parks.¹²⁸ These cut-backs, once again, have the greatest impact on the poorest neighborhoods.¹²⁹

As noted earlier, in recent years there have been efforts by the City and County of Los Angeles and the State of California to improve the park situation in Los Angeles. These efforts include Los Angeles County's adoption of the *Los Angeles River Master Plan* in 1996, the passage of state legislation creating the RMC in 1999, and

123. Garcia, *supra* note 5, at 10.

124. *Id.*

125. *Id.* at 11; Chinatown Cornfield Administrative Complaint Filed by Chinatown Yards Alliance with U.S. Dept. of Housing and Urban Development, U.S. Dept. of Commerce and U.S. Justice Dept. at 26 (dated Sept. 21, 2000) (on file with author) [hereinafter Cornfield Federal Administrative Complaint] ("The continuing disparities in access to parks and recreation programs are a result of the City's funding formulas which were adopted in the wake of Prop 13, which cut off local funds for parks and schools in 1978.").

126. PETER SCHRAG, *PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE* 14-16, 139-49 (1998).

127. *Id.* at 154 ("What the taxpayers gained, the tax collector lost. Overnight, property tax revenues for local agencies declined by between \$6 and \$7 million annually. That amounted to roughly 27 percent of all revenues for cities, 40 percent of county revenues.").

128. Garcia, *supra* note 5, at 9-11.

129. GENZATTI ET AL., *supra* note 2, at 90.

the California State Parks' acquisition of the Cornfield in 2001.¹³⁰ These measures can be understood in part as a response to Los Angeles' park-poor legacy.

IV. HISTORIES OF THE CORNFIELD

Located a stone's-throw from the city's water freeway and close to the Glendale Narrows, the Cornfield is part of the ecological history of the Los Angeles River. Beyond river ecology, the Cornfield is also part of the area's human history. The Cornfield itself, however, presently offers little physical evidence of the communities that shaped—and were shaped by—the site.¹³¹

By the late 1990s, when the Cornfield re-industrialization project took shape, the only permanent structures that remained on-site were a few scattered, dilapidated metal sheds left over from the railroad era.¹³² The rail lines had been removed in the late 1980s.¹³³ At first glance, there was nothing to suggest that the Cornfield had ever been anything but a railyard. In fact, when the City of Los Angeles' Cultural Heritage Department reviewed the reindustrialization project, it concluded that the site had always been devoted to railroad use, and that beyond its railroad legacy the Cornfield had no other historical significance.¹³⁴ This finding lent support to those seeking to redevelop the site for manufacturing and warehouse use. However, according to a 2000 report, prepared jointly by the Urban Planning Department of the University of California at Los Angeles, and Occidental College's Urban and Environmental Policy Institute (2000 UCLA-Occidental College Report), the Cultural Heritage Department's conclusion was deeply flawed:

To fully understand the competing interests on the site and their justifications for continuing or changing prior uses, the history of

130. See *supra* notes 9, 10, 63, 74, and accompanying text.

131. CENZATTI ET AL., *supra* note 2, §3 at 23 ("One of the main quandaries with a site of this type, where no evident physical traces remain, lies in determining how to judge its historic value.").

132. Summary Appraisal Report of Broadway Frontage Component, River Station Site/Cornfield, 1030 North Broadway, Los Angeles, California, Prepared for the Trust for Public Land by CB Richard Ellis, Inc. at 21 (July 25, 2001) (on file with author) [hereinafter Cornfield Appraisal].

133. *Id.*

134. CENZATTI ET AL., *supra* note 2, §3 at 58; Cornfield Federal Administrative Complaint, *supra* note 125, at 30-31 ("The City's Cultural Heritage Department decided that the Cornfield historically has been used as a rail yard and that there is no historical or cultural value worth preserving on the Site.").

Los Angeles' founding and current amnesia about pre-existing settlement and cultures needs to be revealed. The Cultural Heritage Commission's declaration that the Cornfield site has always been a rail yard is in keeping with the 'official' history of the City of Los Angeles, which usually begins with the first defining bout of industrialization at the end of the 1800s. However, this view ignores the area's history prior to Anglo settlement as well as the stories of the marginalized people who have lived and worked in the area since. Most importantly, it encompasses a relatively short time period and a decidedly physical orientation towards history, focusing largely on physical traces and artifacts.¹³⁵

The Cultural Heritage Commission's failure to appreciate the broader historical significance of the Cornfield helps to explain why the re-industrialization project's proponents failed to anticipate the broad opposition that this project provoked. To understand the origins of the coalition that opposed and eventually derailed the Cornfield reindustrialization project, the histories of the people associated with the site must first be examined.

A. *Yangna-Gabrielino Histories*

As noted above, the area near downtown Los Angeles was the site of the Gabrielino village, Yangna. The Gabrielinos were named for Mission San Gabriel, a Spanish mission established nearby in the late eighteenth century.¹³⁶ There is historical uncertainty as to the name by which the Gabrielinos referred to themselves before the arrival of the Spanish settlers.¹³⁷ Although some believe they called themselves Tongva, other claim it was Tobikhar or possibly Kommivert. Some historians question whether they had a name for themselves at all.¹³⁸

Evidence indicates that indigenous people inhabited the area near present-day downtown Los Angeles for more than 9,000 years.¹³⁹ When the Spanish arrived in the late eighteenth century, there were approximately fifty Gabrielino villages in the Los Angeles area, with a total estimated population of between 5,000 and 10,000 people.¹⁴⁰ Yangna served as the civic center for the outlying Gabrielino villages—just as downtown Los Angeles now serves as

135. CENZATTI ET AL., *supra* note 2, §3 at 3-4.

136. GUMPRECHT, *supra* note 11, at 26-27.

137. *Id.*

138. *Id.*

139. CENZATTI ET AL., *supra* note 2, §3 at 25.

140. *Id.*

the civic center for the city's outlying suburbs.¹⁴¹ Located in Yangna was the Council Tree, a massive sycamore under which the chiefs of the Gabrielino villages gathered.¹⁴² Accounts relate that the Gabrielinos' Council Tree, located near the site on which Los Angeles City Hall would later be built, was still standing as late as 1835.¹⁴³

The Gabrielinos were hunters and gathers, and their existence depended on the river that flowed alongside their villages.¹⁴⁴ They ate the acorns from the oak trees that covered the river's bottomlands, the antelope that grazed in the river's floodplain, and the steelhead trout that spawned in the river's waters.¹⁴⁵ The river was also their drinking-water source.¹⁴⁶

The exact location of the village of Yangna has still not been determined, but the consensus among historians is that the village was located west of the Los Angeles River, near present-day Union Station.¹⁴⁷ The 2000 UCLA-Occidental College Report considered the relation between Yangna and the Cornfield, and concluded that: "The chances that the Gabrielino village of Yangna was located on the Cornfields site seems relatively slim, though it seems reasonable that the village lay very close to it and that the site saw considerable use as a trail to ford the river."¹⁴⁸ Regardless of whether or not the Cornfield is situated within Yangna-proper, it is likely that the site was part of Yangna's immediate environs and was integral to the village's river-related activities.

B. *Spanish-Mexican Histories*

Spain was the first European nation to lay claim to California, when the expedition of Juan Rodriguez Cabrillo landed at San Diego Bay in 1542.¹⁴⁹ The Cabrillo expedition, however, did not venture far inland in its travels along the California coast, and there is no record that it ever came into contact with any rivers near modern Los Angeles.¹⁵⁰ In 1602, Spanish explorer Sebastian Vizcaíno

141. MORRISON & LAMONICA, *supra* note 1, at 37.

142. *Id.*

143. *Id.*

144. GUMPRECHT, *supra* note 11, at 26-27.

145. *Id.* at 2, 26-27; MORRISON & LAMONICA, *supra* note 1, at 33-34.

146. GUMPRECHT, *supra* note 11, at 26-27.

147. *Id.* at 29.

148. CENZATTI ET AL., *supra* note 2, §3 at 25.

149. GUMPRECHT, *supra* note 11, at 35.

150. *Id.*

led an expedition to survey the coastline from Acapulco to Oregon, including San Pedro Bay.¹⁵¹ As was the case with Cabrillo's expedition, there is no indication that Vizcaino was aware of the river that flowed across the Los Angeles plain.¹⁵²

Spain's discovery of the Los Angeles River and the lands that adjoined it would wait until 1769. In 1768, the Spanish government ordered an expedition to set forth from Baja California to occupy the port at Monterey Bay.¹⁵³ In the previous century, Vizcaíno had noted Monterey's potential as a harbor.¹⁵⁴ Pursuant to this order from Spain, the governor of Baja California, Gaspar de Portola, organized a party to head north.¹⁵⁵ Portola's expedition party included engineer Michael Costano and Father Juan Crespí, and it is Costano's and Crespí's accounts that provide the first record of Spanish exploration of the wooded marshlands that lay inland of San Pedro Bay.¹⁵⁶

On the morning of August 1, 1769, the Portola expedition rested among dense, low woods in the Los Angeles plain to celebrate the jubilee of Nuestra Señora de los Angeles de la Porciúncula ("Our Lady of the Angels of Porciúncula"), a plenary indulgence of the Roman Catholic church named for a small Italian chapel in which Saint Francis of Assisi allegedly received a divine revelation.¹⁵⁷ Following morning mass, the expedition pressed on and came to a riverbed. That day Father Juan Crespí wrote more than a thousand words in his journal, describing the river and its surrounding terrain as "very large, very green bottomlands," with grapevines, roses, and sage in full bloom, and an abundance of turtle doves, quail, and thrushes. Crespí noted that "to my mind this spot can be given the preference in everything, in soil, water and trees, for the purpose of becoming in time a very large plentiful mission."¹⁵⁸ In honor of the particular day that the Portola expedition came upon it, the expeditioners took to calling the river the Rio de Porciúncula.¹⁵⁹

Based in large part on the rapturous reports in Father Juan

151. *Id.*

152. *Id.*

153. *Id.* at 35-36.

154. *Id.*

155. *Id.* at 35.

156. *Id.*

157. *Id.* at 37.

158. *Id.* at 38.

159. *Id.* at 37.

Crespí's journal, in 1781 the Spanish authorities authorized the first governor of California, Felipe de Neve, to establish a mission and settlement near the Rio de Porciúncula, called El Pueblo de la Reina de Los Angeles (Pueblo Los Angeles).¹⁶⁰ The site selected by de Neve for the settlement was located one-half mile west of the river and close to the Glendale Narrows, near the site of the existing Gabrielino village of Yangna.¹⁶¹ To provide drinking water to the pueblo and irrigation for its adjacent fields, in October 1781 the Zanja Madre ("mother ditch") was constructed to transport the water from the Rio de Porciúncula.¹⁶²

It is believed that wheat, beans, and maize were the primary crops planted by the original Spanish-Mexican settlers in Pueblo Los Angeles.¹⁶³ The fertile soil and steady water supply provided by the river enabled the pueblo to attain economic self-sufficiency by 1786, when the Spanish government's subsidy was discontinued.¹⁶⁴

In the decades that followed, the Zanja Madre was expanded into a comprehensive zanja system—a network of water conveyance canals.¹⁶⁵ It was this zanja system that formed the basis for Pueblo Los Angeles' development.¹⁶⁶ The United States seized possession of California in 1848 following the Mexican-American War. When United States Army Lieutenant Edward Ord came to Los Angeles in 1849 to survey the town, he encountered vineyards, orchards, and gardens extending four miles down the river's banks.¹⁶⁷ As the United States asserted control over the area, the name Rio de Porciúncula gave way to the less colorful "Los Angeles River," and the earthen Zanja Madra and zanja system canals were replaced with concrete-lined conduits and underground pipes.¹⁶⁸

In early 2000, in the midst of the controversy over the proposed reindustrialization of the Cornfield site, two amateur archaeologists were digging along the base of the bluffs near North Broadway Street.¹⁶⁹ Their excavation uncovered remnants of the original

160. *Id.* at 41-42.

161. *Id.* at 38.

162. *Id.* at 43.

163. *Id.* at 43.

164. *Id.* at 44-46.

165. CENZATTI ET AL., *supra* note 2, §3 at 30-32.

166. *Id.*

167. GUMPRECHT, *supra* note 11, at 55.

168. CENZATTI ET AL., *supra* note 2, §3 at 30-32.

169. Jan Chatten-Brown, Materials Submitted for "The Value of Urban Greenspace: Lessons from the Los Angeles Cornfield," Panel at the Annual Conference of the Real

Zanja Madre.¹⁷⁰

C. *Railroad Histories*

The Cornfield was also a significant landmark for California's early corporate giant, the Southern Pacific Railroad. As recounted in Frank Norris' infamous 1901 novel, *The Octopus*, the Southern Pacific Railroad played a pivotal role in the late nineteenth century and early twentieth century development of the state.¹⁷¹

Southern Pacific came to Los Angeles in 1876.¹⁷² The railroad's main line ran to downtown Los Angeles through the Glendale Narrows, paralleling the east bank of the Los Angeles River.¹⁷³ In the 1920s, Southern Pacific's main switching and repair facility, Taylor Yard, occupied three miles of riverfront land just upriver from the Cornfield site.¹⁷⁴ At one time Taylor Yard employed more than 10,000 people.¹⁷⁵ Additional switching and maintenance facilities were located downriver from Taylor Yard at the Cornfield. The modern Cornfield contains at least three significant historical vestiges from the railroad era.

First, the arrival of the railroads in the city was soon followed by the construction of several grand bridges across the Los Angeles River.¹⁷⁶ Although most of these bridges were initially constructed to carry Southern Pacific rails, many of them later carried streetcars and automobiles.¹⁷⁷ One of the most spectacular of these spans is the North Broadway Bridge at the extreme northeast edge of the Cornfield. The North Broadway Bridge, completed in 1912, is a monumental Beaux Arts work designed by renowned Los Angeles architect Alfred F. Rosenheim.¹⁷⁸ The Bureau of Engineering of the Los Angeles City Department of Public Works recently oversaw the bridge's retrofit and restoration, and determined that the structure was eligible for listing on the National Registry of Historic

Property Law Section of the State Bar of California (Apr. 27, 2002) (on file with author) [hereinafter Chatten-Brown Materials].

170. *Id.*

171. FRANK NORRIS, *THE OCTOPUS: A STORY OF CALIFORNIA* (1901).

172. GUMPRECHT, *supra* note 11, at 111-12.

173. *Id.*

174. *Id.*

175. *Id.*

176. *California Historic Preservation Awards*, ARCHITECTURE Wk., Mar. 28, 2001, at N3 [hereinafter *Architecture Week Article*].

177. *Id.*

178. *Id.*

Places.¹⁷⁹ In 2001, the North Broadway Bridge retrofit and restoration effort was recognized in an award by the California Preservation Society. In an article on the award ceremony, *Architecture Week* magazine noted that at one time the North Broadway Bridge was known as the "gateway" to the city.¹⁸⁰

Second, in the early 1930s, the city approved the plan for Los Angeles' Union Station to be constructed at a site located in the city's original Chinatown.¹⁸¹ To make way for Union Station, which was completed in 1939, the original Chinatown structures were demolished and Chinatown's population was forcibly relocated to its current location, which is adjacent to and overlooking the Cornfield.¹⁸² Moreover, it should also be remembered that it was largely Chinese workers that constructed the Southern Pacific railroad in Los Angeles and throughout California.¹⁸³ The history of Southern California's railroads and the Cornfield is therefore closely intertwined with the history of the Chinese residents of Los Angeles.

Thirdly, the railroad uses at the Cornfield site resulted in the release of hazardous substances into the soil. For instance, one area of the site had contained a building called the Oil House where barrels of diesel and other heavy-metal fuels such as journal box oil were stored.¹⁸⁴ Recent subsurface testing confirmed the presence of petroleum hydrocarbons in the soils beneath the former Oil House site.¹⁸⁵ The history of the Southern Pacific railroad is therefore also a part of the Cornfield's legacy of environmental contamination. The cost of the cleanup associated with this contamination was a critical issue in the subsequent controversy over whether the site could or should be redeveloped as urban parkland.

D. *Current Community Histories*

An understanding of the demographics of the neighborhoods that presently surround the Cornfield is also essential to understanding the larger debate over the site.

179. Los Angeles Bureau of Eng'g, *North Broadway Viaduct over the Los Angeles River*, at http://eng.lacity.org/projects.bridge/br_bw.htm (last visited Feb. 6, 2004).

180. *Architecture Week* Article, *supra* note 176.

181. Garcia, *supra* note 5, at 12-15.

182. *Id.*

183. See generally NORRIS, *supra* note 171; STEPHEN E. AMBROSE, *NOTHING LIKE IT IN THE WORLD: THE MEN WHO BUILT THE TRANSCONTINENTAL RAILROAD 1863-1869* (2000).

184. CENZATTI ET AL., *supra* note 2, §3 at 44.

185. *Id.*

The 2000 UCLA-Occidental College Report on the Cornfield noted that in 1989, 91% of the population within a two-mile radius of the site had a median household income below that of Los Angeles County.¹⁸⁶ Within this same two-mile radius, over 30% of the households were below the poverty line, as compared with 18.9% for the rest of the City of Los Angeles.¹⁸⁷

The UCLA-Occidental College Report also provided an analysis of the population of the census tract (2071) and zip code (90012) closest to the Cornfield.¹⁸⁸ For census tract 2071, it found that Asians/Pacific Islanders, Hispanics, and African-Americans collectively accounted for 97% of the population, and that for zip code 90012 Asians/Pacific Islanders, Hispanics and African-Americans collectively accounted for 86% of the population.¹⁸⁹ These same ethnic groups collectively constituted 69% of the City of Los Angeles.¹⁹⁰

The UCLA-Occidental College Report also found that, for persons over the age of 25, 54% of those living in census tract 2071 and 27% of those living in zip code 90012 had an education level below the ninth grade. Fourteen percent of those living in census tract 2071 and 20% of those living in zip code 90012 had graduated from high school. Only 3% of those living in census tract 2071 and 7% of those living in zip code 90012 had a college bachelor's degree.¹⁹¹ These levels of education are far below the median for the City of Los Angeles.¹⁹²

These statistics reveal that, as compared with the rest of the city, the communities surrounding the Cornfield are disproportionately poor, disproportionately people of color, and possess disproportionately low levels of formal education. Beyond these broad statistics, however, the particular ethnic groups that predominate in the area near the Cornfield have their own unique histories of discrimination. These histories help to explain these groups' particular connections to the Cornfield site and the particular perspectives they brought and continue to bring to the debate over what the site should be.

For the downtown Chinese community, the destruction of Los

186. *Id.* at 91.

187. *Id.*

188. *Id.* at 87.

189. *Id.*

190. Garcia, *supra* note 5, at 10.

191. CENZATTI ET AL., *supra* note 2, §3 at 90.

192. *Id.*

Angeles' initial Chinatown to make way for Union Station remains a defining experience. As Robert Garcia of CLIPI recounts in his description of this episode:

Some residents refused to move out even when the utilities ceased to exist and when the pavement was uprooted. Demolition commenced on December 22, 1933. The first building razed was a children's school. Soon the remnants of the vegetable market were destroyed. Chinese residents plucked the last vegetables from their disappearing gardens while others slowly plodded away from their quickly wrecked homes with their cooking utensils and their few other belongings in shopping bags. Some residents scattered to other enclaves while others lingered for years watching their community crumble around them. The City Municipal Housing Commission did not even approve a plan to relocate Chinatown until weeks after the demolition started.¹⁹³

Many of the refugees from Los Angeles' initial Chinatown moved to the designated relocation site, an area of vacant Santa Fe Railroad land above North Broadway Street.¹⁹⁴ Here they worked to rebuild their community, to create a new neighborhood for Chinese families and a new city-wide focal point for Chinese culture. As today's Chinatown residents looked out on the vacant Cornfield railyard from the North Broadway Street bluffs, with Union Station visible across the yard from this vantage point, they envisioned something other than a manufacturing-warehouse complex. They envisioned a place that would beautify and strengthen their neighborhood.

For the Hispanic community in the Lincoln Heights and Solano Canyon neighborhoods close to the Cornfield, a defining experience was the demolition of the Chavez Ravine neighborhood. Chavez Ravine, located adjacent to Elysian Park above present-day Chinatown, was a working class, Mexican-American residential community.¹⁹⁵ The City of Los Angeles, however, forcibly relocated the citizens of Chavez Ravine in the 1950s to build Dodger Stadium for the baseball team that moved to Los Angeles from Brooklyn.¹⁹⁶ Chavez Ravine's dislocated residents had been promised new, federally financed housing, but this housing was never built.¹⁹⁷ Today the rolling hills surrounding Chavez Ravine's former residences

193. Garcia, *supra* note 5, at 14.

194. *Id.*

195. See generally DON NORMARK, CHAVEZ RAVINE, 1949: A LOS ANGELES STORY (1999).

196. *Id.* at 21.

197. *Id.* at 20.

are blanketed with the stadium's immense asphalt parking lot.¹⁹⁸ The broken promises and lost landscapes associated with Chavez Ravine provide the historical context for the Hispanic community's determination to reclaim the Cornfield.

For African-Americans who live near the Cornfield in the William Mead Homes and the Boyle Heights neighborhood, there is also a long legacy of discrimination, especially in the housing sector. Between 1910 and 1920, the African-American population of Los Angeles doubled.¹⁹⁹ This influx was met with a hostile response by many of the city's white citizens, who began recording restrictive racial covenants to block the sale of homes or rental of apartments to African-Americans.²⁰⁰ As a consequence, by 1920 the city's African-American residents were concentrated in, or perhaps more accurately *contained* within, four primary areas: Boyle Heights in East Los Angeles; the Westside on Jefferson Boulevard between Normandie and Western Avenues; the Temple Street settlement northwest of downtown, between Alvarado and Hoover Avenues; and the Furlong Tract, a few blocks east of Central Avenue between Fifty-First and Fifty-Fifth Streets.²⁰¹

As the 1998 book *Central Avenue Sounds: Jazz in Los Angeles* notes: "While the expanding white populations fanned out throughout the Los Angeles Basin, blacks were forced to move into the existing communities. . . . Black renters and homeowners were increasingly met by walls of white resistance."²⁰² Although these restrictive racial housing covenants were held illegal soon after World War II, the vestiges of the period when these covenants were enforceable remain evident today.²⁰³ This history helps to explain why many African-American residents living near the Cornfield continue to experience a certain disconnectedness from Los Angeles and its history. It also explains why the prospect of reclaiming the Cornfield as parkland was perceived by these residents as an opportunity to reconnect.

198. *Id.* at 76.

199. *CENTRAL AVENUE SOUNDS: JAZZ IN LOS ANGELES* 7 (Clora Bryant et al. eds., 1998).

200. *Id.* at 7-8.

201. *Id.* at 7.

202. *Id.* at 8.

203. *Id.* at 7.

V. REINDUSTRIALIZING THE CORNFIELD: RESISTANCE IN THE
COMMUNITY AND THE COURTS

In March of 1999, Los Angeles Mayor Richard Riordan introduced his "Genesis LA" economic incentive program.²⁰⁴ Genesis LA was designed to redevelop blighted industrial sites in the city.²⁰⁵ Within months of the launch of Genesis LA, it was announced that Majestic Realty would be purchasing the Cornfield from Union Pacific Railroad to build a new manufacturing and warehouse complex called River Station (the name of the former Southern Pacific railyard depot located on the site).²⁰⁶ Majestic Realty is the largest owner and developer of commercial space in Los Angeles County.²⁰⁷

The proposed River Station complex consisted of four buildings totaling 909,200 square feet of light manufacturing and industrial space.²⁰⁸ The thirty-two level acres of the Cornfield would be paved over by Majestic Realty, and the eight acres of steep bluff along North Broadway would remain pavement-free and available as a community park.²⁰⁹

Genesis LA's and Majestic Realty's redevelopment plans for the Cornfield, however, appear to have been formulated without an understanding of the communities and politics surrounding the site. These plans did not account for the fact that for many years prior to 1999 there had been a growing movement to reclaim downtown lands adjacent to the Los Angeles River as open space to benefit both the river's ecology and the nearby communities. The Cornfield site figured prominently in these downtown open-space/river-restoration initiatives. This placed the reindustrialization proposal on a collision course with environmentalists and many nearby residents. If Mayor Riordan's office and Majestic Realty were genuinely surprised by the forceful and broad-based opposition to the River Station project, they should not have been.²¹⁰

204. CENZATTI ET AL., *supra* note 2, §3 at 2.

205. *Id.* at 3.

206. *Id.*; Cornfield State Park Advisory Committee, A Unified Vision for Cornfield State Park 3 (Apr. 2003) (report presented to the Director of California State Parks) (on file with author) [hereinafter Unified Vision].

207. CENZATTI ET AL., *supra* note 2, §3 at 2-3.

208. Chatten-Brown & Delvac, *supra* note 3, at 4.

209. Chatten-Brown Materials, *supra* note 169.

210. William Delvac, Remarks at "The Value of Urban Greenspace: Lessons Learned from the Los Angeles Cornfield," Panel at the Annual Conference of Real Property Law Section of State Bar of California (Apr. 27, 2002) (transcript on file with author) [hereinafter Delvac Remarks]:

A. *An Alternative Vision for the Cornfield Takes Hold*

As noted above, in 1998 FoLAR (Friends of the Los Angeles River), the Sierra Club, and the Urban Resources Partnership organized *The River Through Downtown* conference.²¹¹ The report prepared for and distributed at the conference set forth land-use proposals for several downtown areas located adjacent or close to the Los Angeles River. The report was the result of a series of meetings and workshops held in riverside downtown neighborhoods.²¹² An entire section of the report was devoted to a tract of abandoned railroad land identified as the "Chinatown Yards" or the "Cornfield Railyard."²¹³ Below is the vision for the Cornfield presented at *The River Through Downtown* conference:

Envision a new urban neighborhood linking Chinatown and the Los Angeles River where residential, office and retail uses overlook a large park. Picnic areas under the trees, soccer fields, softball diamonds, and new middle school serve Chinatown, Lincoln Heights, and a new neighborhood called River Park. Along the edge of the park, the Zanja Madre or "Mother Canal," follows an alignment closely parallel to the historic canal that carried water from the river to sustain the old Los Angeles pueblo. Beginning at the base of Elysian Park, the canal runs along to the slope below North Broadway. A bikeway follows the canal, and new housing, climbing up the slope, overlooks the park. The park and the adjoining residential development have replaced abandoned railroad yards, while the Blue Line to Pasadena runs behind the housing.

....

A series of pools and fountains extends the new zanja, under densely planted trees, along the edge of a redesigned Alameda Street, with the bicycle path continuing alongside. Opposite Union Station, channels, including a flume, or raised channel, across the 101 Freeway, extend to a grand fountain east of City Hall.

[W]hen I came to this project, my client saw a site that had tremendous opportunities and tremendous obstacles, but that had overwhelming, almost unanimous from their view, believe it or not, political support. In fact the first call I got on this was: 'We've got an extremely easy project for you; no one objects to this project, everyone supports it. The Mayor's office is going to expedite it, the council office is going to expedite it, there are no environmental issues, there is no community opposition. All we need you to do is take a look at this little Mitigate Neg Dec and make sure we're on track.'

211. *The River Through Downtown*, *supra* note 64, at 5.

212. *Id.*

213. *Id.* at 7.

....

From there, water features continue eastward to the Japanese National Museum and the Temporary Contemporary, commemorating the historic irrigated fields between the original town and the river.²¹⁴

The land-use ideas proposed for the Cornfield at the 1998 *The River Through Downtown* conference were somewhat different than the Cornfield park planning ideas being discussed today. As compared with current park plans, *The River Through Downtown* conference proposed using part of the site for housing and a new middle school. These differences notwithstanding, it was evident that by 1998 environmentalists and neighborhoods near the Cornfield were beginning to view the site as more than just a parcel of private, former industrial land for sale. They were beginning to believe that the site could and should be reclaimed for a variety of public purposes—including parkland, river restoration, housing and education—and that a broader public dialogue was needed to determine its future.

B. *Majestic Realty's River Station Reindustrialization Project*

When Mayor Riordan's Genesis LA project was launched in early 2000, the Cornfield was a weed-filled expanse, strewn with building debris and rusting metal and makeshift encampments for the homeless.²¹⁵ The site had been in this condition for nearly a decade, during which time no economically viable redevelopment proposal had surfaced. Faced with these circumstances, from the city's perspective, Majestic Realty's reindustrialization project appeared to offer several advantages.

First, the site was already zoned for industrial use. Therefore, Majestic Realty's plans did not require any land-use variances or zoning changes.²¹⁶ The only discretionary approval required for Majestic Realty's project would be the city's review of the site plan.²¹⁷ In contrast, for uses such as housing, parkland, or schools, additional planning department reports and public hearings would be needed, as the city considered whether to grant the needed variances. These anticipated reports and hearings could result in delays and uncertainty.

214. *Id.* at 21.

215. Chatten-Brown & Delvac, *supra* note 3, at 3-4.

216. *Id.* at 4.

217. LOS ANGELES CAL. CODE § 16.05 (1990).

Second, because the environmental cleanup standards for schools, housing, and parkland are higher than the standards for industrial/warehouse sites, the cost of remediating the Cornfield's subsurface contamination was likely to be considerably less if the site's end uses were those proposed in Majestic Realty's plan rather than those set forth in *The River Through Downtown* report.²¹⁸ Moreover, if Majestic Realty redeveloped the Cornfield, then presumably Majestic Realty would be responsible for the environmental remediation costs. If, on the other hand, the City of Los Angeles acquired the Cornfield for a park or school, then presumably the City of Los Angeles might have to pay for the cleanup.²¹⁹

Third, Majestic Realty's proposal offered the prospect of tangible, short-term economic benefits. There appeared to be a high demand for additional industrial and warehouse space in the vicinity of downtown Los Angeles. The prospects for the financial success of the River Station complex therefore looked good.²²⁰ Majestic Realty had also estimated that the River Station facility could create as many as 1,000 jobs, some of which might go to nearby residents.²²¹

Finally, in addition to the significant financial assets that Majestic Realty would bring to the table, the River Station project had also managed to secure an \$11.75 million commitment from the United States Department of Housing and Urban Development (HUD).²²² More specifically, in August 1999 HUD Secretary Andrew Cuomo announced that, in order to support Majestic Realty's Cornfield redevelopment proposal, HUD would provide a \$1.25 million grant under its Brownfield Economic Development Initiative to help cover environmental cleanup costs and another \$10.5 million in loan guarantees.²²³

In light of these perceived advantages, Mayor Riordan's office

218. CENZATTI ET AL., *supra* note 2, §3 at 129:

Its [sic] seems the economics of a brownfields site is its own worst enemy. The costs of remediation rise with the more public of a use of a property. Building box-type manufacturing is more beneficial for the City in terms of both tax revenue and remediation costs, as opposed to putting in a park or building a school, which could be financially confiscatory for the City to bear on its own.

219. Interview with Lewis MacAdams, Cofounder and Chair of the Board of Directors, FoLAR, during visit to Cornfield site (July 2001) [hereinafter Interview with Lewis MacAdams].

220. Chatten-Brown & Delvac, *supra* note 3, at 5.

221. *Id.*

222. CENZATTI ET AL., *supra* note 2, §3 at 125.

223. *Id.*

moved quickly to expedite approval of the River Station project.²²⁴ Under California law, all state and local agencies must comply with the requirements of the California Environmental Quality Act (CEQA) when granting discretionary approval of a project.²²⁵ Under CEQA, if there is a fair argument that there is substantial evidence in the administrative record that discretionary approval of a project may result in a significant adverse impact on the environment, then an environmental impact report (EIR) must be prepared by the agency authorized to make the approval.²²⁶ An EIR prepared under CEQA is similar in scope and substance to an environmental impact statement (EIS) prepared pursuant to the federal National Environmental Policy Act (NEPA).²²⁷

If a fair argument cannot be made that there is substantial evidence in the administrative record that discretionary approval of a project may result in a significant adverse impact on the environment, then the agency can avoid preparing an EIR and instead adopt a document called a Negative Declaration ("Neg Dec").²²⁸ A Neg Dec that includes mitigation measures that reduce the adverse environmental impact of a project so that an EIR is not required is referred to as a Mitigated Neg Dec.²²⁹

As mentioned above, the only discretionary City of Los Angeles approval for the River Station project involved review of the site plan. On May 23, 2000, the Director of the City of Los Angeles Planning Department approved the Cornfield site plan submitted by Majestic Realty and adopted an accompanying Mitigated Neg Dec.²³⁰

On June 6, 2000, the Planning Department's decision to adopt a Mitigated Neg Dec instead of requiring preparation of an EIR was appealed by FoLAR and other groups to Los Angeles' Central

224. *Id.* at 126:

The Mayor's Office of Economic Development is firmly committed to the idea of the 32-acre River Station Industrial Park. They have expended time and money in developing this project and want to see it through The City has a developer, funding—there are no other proposals lined up that would serve this site as compared to the one that is currently proposed.

225. See generally CAL. PUB. RES. CODE §§ 21,000-21,177 (West 2004).

226. See MICHAEL H. REMY ET AL., GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT 206 (1999).

227. *Id.* at 1; see also generally 42 U.S.C. §§ 4321-4370(f) (2000).

228. REMY ET AL., *supra* note 226, at 1.

229. *Id.* at 244-49.

230. Delvac Remarks, *supra* note 210; see also Los Angeles Planning Department MND 99-0319 SPR.

Area Planning Commission.²³¹ On July 25, 2000, the Central Area Planning Commission heard and voted to deny the appeal.²³²

On August 8, 2000, pursuant to Section 245 of the City of Los Angeles Charter, Los Angeles City Councilmember Mike Hernandez made a successful motion for the City Council to assert jurisdiction over the question of whether the city should adopt a Mitigated Neg Dec or require preparation of an EIR in connection with approval of the site plan for the River Station project.²³³ On August 15, 2000, the Los Angeles City Council voted to approve adoption of a Mitigated Neg Dec that contained some minor additional mitigation measures.²³⁴ With this act, the City Council removed the last administrative roadblock to Majestic Realty's Cornfield reindustrial-ization plan.

C. *Political Opposition by the Chinatown Yards Alliance*

Opposition to Majestic Realty's River Station project was led by the network of organizations that coalesced to form the Chinatown Yards Alliance.²³⁵ Its members included more than thirty organizations that collectively represented a broad spectrum of stakeholders and communities interested in the fate of the Cornfield. These included, among others, the Chinese Consolidated Benevolent Association of Los Angeles, Concerned Citizens of South Central Los Angeles, Friends of the Los Angeles River, Latino Urban Forum, Lincoln Heights Neighborhood Preservation Association, Los Angeles County Bicycle Coalition, Mothers of East Los Angeles-Santa Isabel, and William Mead Homes Residents Association.²³⁶

The litigation pursued by certain member organizations of the

231. Delvac Remarks, *supra* note 210.

232. *Id.*

233. *Id.*

234. *Id.*

235. Chatten-Brown & Delvac, *supra* note 3, at 4; Garcia, *supra* note 5, at 8-10.

236. Chatten-Brown Materials, *supra* note 169. Listed members of the Chinatown Yards Alliance included the following organizations and individuals: Ad Hoc Committee for Safe Children; Chinatown-Alpine Hill Neighborhood Association; Chinese-American Citizen's Alliance; Chinese Consolidated Benevolent Association; Citizens Committee to Save Elysian Park; Coalition L.A. 1st District Organizing Committee; Coalition of Essential Schools; Coalition for Clean Air; Concerned Citizens of South Central Los Angeles; Constance L. Rice and The Advancement Project; Echo Park Community Coordinating Council; Elysian Heights Residents Association; Environmental Defense; Friends of Castelar School; Friends of the Los Angeles River; Heal the Bay; Latino Urban Forum; Lincoln Heights Neighborhood Preservation Association; Los Angeles Alliance for a New Economy; Los Angeles County Bicycle Coalition; William Mead Homes Residents Association; Maria Elena Durazo; Mothers of East Los Angeles-Santa Isabel; Natural Resources Defense Coun-

Chinatown Yards Alliance is discussed in greater detail below. This litigation, however, was only one manifestation of the multifaceted role that the Chinatown Yards Alliance played in efforts to prevent reindustrialization of the Cornfield.

One of the first acts of the Chinatown Yard Alliance was to issue a declaration, signed and endorsed by all of its members, setting forth its position regarding the River Station project in particular and the Cornfield in general. This concise, four-paragraph declaration served as a cornerstone of the Chinatown Yards Alliance's efforts to generate political support and media attention. The declaration, in its entirety, provided:

We, the undersigned central city organizations, representing neighbors in Chinatown, Lincoln Heights, the William Mead Homes and around Elysian Park, as well as environmental groups working in the Los Angeles River corridor, reject Majestic Realty's attempt to build nearly a million square feet of warehouse on 32 acres of the Cornfields, the old railroad yards between Chinatown and the Los Angeles River. Better alternatives exist.

We urge the City of Los Angeles to take advantage of the once-in-a-century opportunity the closing of the rail-yard offers to support a plan to build a middle and high school, sportsfields, a park, and a bikeway in a community where are none, and much needed-housing.

We believe the award, without public discussion, of nearly 14 million dollars in Federal H.U.D. brownfields clean-up funds to help one of the largest developers in Southern California buy the property is an unwise, inappropriate, and unfair misuse of public funds. Majestic Realty's proposal promises jobs but guarantees only more congestion, more air and noise pollution, and more blight in our communities.

It is time for all interested parties to focus attention on a more constructive use of this site. We look forward to working with the L.A. Unified School District, the City and County of Los Angeles, the State of California and the Federal government to develop a project in the Chinatown Yards that strengthens our central city communities, and creates a better place for all of us to live.²³⁷

Member organizations of the Chinatown Yards Alliance also retained legal counsel to file an administrative complaint with the Secretaries of the United States Housing and Urban Development Department (HUD) and Commerce Department, and the head of

cil; Northeast Renaissance Corp; Northeast Trees; People for Parks; Sierra Club; Southern California Council on Environment and Development; and TreePeople.

237. *Id.*

the Civil Rights Division of the United States Department of Justice.²³⁸ The legal team that drafted this administrative complaint included Jan Chatten-Brown of Chatten-Brown & Associates, Robert Garcia (initially with Environmental Defense and later with CLIPI), Joel Reynolds of Natural Resources Defense Council (NRDC), and Lew Hollman of CLIPI.²³⁹

The essence of the sixty-five-page administrative complaint, filed on September 21, 2000, on behalf of FoLAR, the Chinese Consolidated Benevolent Association of Los Angeles, Concerned Citizens of South Central Los Angeles, Latino Urban Forum, Natural Resources Defense Council, and the Northeast Renaissance Corporation, was that the federal government's financial support for the River Station project violated federal civil rights and environmental justice laws.²⁴⁰ In particular, the administrative complaint alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI),²⁴¹ the HUD regulations implementing Title VI,²⁴² and the 1994 Executive Order on Environmental Justice.²⁴³

Below are excerpts from the some of the allegations set forth in the Administrative Complaint:

Communities of color and low-income communities bear a disproportionate share of the environmental degradation in the Cornfield area, their health and environment would further be adversely impacted by the Warehouse Project, they would not receive an equitable share of the benefits of the Project, and they have been excluded from the decision-making processes that affect their lives and the future of the Cornfield.²⁴⁴

....

The siting of the Warehouse Project causes an adverse disparate impact by *perpetuating the history* and pattern of unequal access by people of color and low-income communities to parks and recreation programs, playgrounds, and schools in the Cornfield area, in City Council District 1, and throughout Los Angeles.²⁴⁵

....

The siting of the Warehouse Project will cause adverse disparate impacts on public safety from increased traffic congestion in and

238. Cornfield Federal Administrative Complaint, *supra* note 125.

239. *Id.* at 65.

240. *Id.* at 6, 9-12.

241. 42 U.S.C. § 2000(d) (2000).

242. 24 C.F.R. §1.7 (2004); 24 C.F.R. § 91.05 (2004).

243. Exec. Order No. 12,898, *reprinted in* 59 Fed. Reg. 7629 (Feb. 16, 1994).

244. Cornfield Federal Administrative Complaint, *supra* note 125, at 20.

245. *Id.* at 25 (emphasis added).

around the site. The children at Ann Street Elementary School adjacent to the William Mead Homes in particular would face additional traffic safety risks associated with hundreds of truck trips to and from the Warehouse Project during the day at the site entrance adjacent to the school.²⁴⁶

. . . .

The Warehouse Project is an eyesore to say the least. The construction and operation of nearly 1 million square feet of warehouses with 40-foot high tilt up walls would adversely impact the aesthetic experience of the residents or and visitors to Chinatown, Solano Canyon, Lincoln Heights and William Mead. They will have to view 32 acres of warehouses, trucks, cars, and parking lots.²⁴⁷

. . . .

Respondents seek to pave over the contamination on the site and leave it for future generations to clean up when the warehouses come down. Contaminated brownfields are disproportionately located in communities of color and low income communities. These communities have the right to have the Cornfield cleaned up now and to the highest standards.²⁴⁸

In response to the administrative complaint and other efforts by the Chinatown Yards Alliance to promote an alternative vision for the Cornfield, former HUD Secretary Andrew Cuomo announced during a visit to Los Angeles in late September 2000 that he would not release the \$11.75 million HUD package for the River Station project until an EIS was prepared pursuant to NEPA.²⁴⁹ Because the NEPA process for preparation of an EIS generally takes at least a year and often much longer, Secretary Cuomo's decision effectively placed the HUD grant-loan package out of reach of the City of Los Angeles and Majestic Realty for the near term and placed the long-term availability of this package into question as well.

In addition to the administrative complaint, Secretary Cuomo's decision to withdraw HUD's funding was also due in part to the efforts of Robert F. Kennedy, Jr., a senior environmental attorney with NRDC's New York office.²⁵⁰ Cuomo is married to Robert F. Kennedy, Jr.'s sister. At the request of Joel Reynolds of NRDC's Los

246. *Id.* at 30.

247. *Id.* at 31-32.

248. *Id.* at 34.

249. Garcia, *supra* note 5, at 5.

250. Email from Joel Reynolds, Natural Resources Defense Council, to Paul Kibel (Dec. 2, 2003) (on file with author).

Angeles office, in June 2000 Robert F. Kennedy, Jr. contacted his brother-in-law and discussed the Chinatown Yards Alliance's concerns regarding the proposed River Station project.²⁵¹ According to Joel Reynolds, absent Robert F. Kennedy, Jr.'s direct access to Cuomo, it is unlikely that HUD's headquarters in Washington, D.C. would have intervened in a funding decision that would ordinarily have been entrusted to HUD's Los Angeles office.²⁵² The Chinatown Yards Alliance's ability to gain access and results at this high political level caught Majestic Realty off-guard.²⁵³

At a panel organized by the California State Bar in April 2002, William Delvac (the attorney representing Majestic Realty in the Cornfield matter) was asked what role the loss of the \$11.75 million grant-loan package played in his client's view of the proposed River Station project. Delvac responded:

I don't believe that in my client's view the HUD funding was ever a critical piece of this. But what was critically important about HUD requiring an EIS under NEPA is that this is when Majestic Realty finally fully realized that no matter what it did or what approval it got, every other step of the way there would be another skirmish, another battle, another front and that if they went into trial court there would be an appeal. If they got the HUD funding there would be an EIS, and if they did an EIS there would be litigation on the EIS. . . . The endless stream of opposition, even if you can predict ad seriatim victory—just going through that process year after year drives down the value of the project.²⁵⁴

Beyond its role in convincing HUD to pull its funding for the River Station project until an EIS was prepared, the Chinatown Yards Alliance also made headway in bringing key politicians around to its position.²⁵⁵ Although Los Angeles Mayor Riordan remained steadfast in his support for Majestic Realty's reindustrialization plans, Speaker of the State Assembly (and subsequent mayoral candidate for the City of Los Angeles) Antonio Villaraigosa and influential State Senator Richard Polanco (from Los Angeles) were persuaded to voice their support for the preparation of an EIR that would consider the park alternative.²⁵⁶ Villaraigosa's and Polanco's public support raised the political profile of the Cornfield controversy, which in turn prompted the *Los Angeles Times* to run a series

251. *Id.*

252. *Id.*

253. *Id.*

254. Delvac Remarks, *supra* note 210.

255. Chatten-Brown Materials, *supra* note 169.

256. *Id.*

of articles and editorials on the dispute that were sympathetic to the concerns and aspirations of the Chinatown Yards Alliance.²⁵⁷

D. *River Station Lawsuit and September 2000 Settlement Agreement*

With the Los Angeles City Council's approval of the design plan and adoption of the Mitigated Neg Dec on August 15, 2000, opponents of Majestic Realty's reindustrialization project had exhausted their administrative remedies. Their only recourse now lay with the courts. On September 6, 2000, therefore, the opponents filed a petition for writ of mandate against the City of Los Angeles in Los Angeles County Superior Court, with Majestic Realty and River Station LLC named as real parties-in-interest.²⁵⁸ The named petitioners were FoLAR, the Chinese Consolidated Benevolent Society of Los Angeles, Concerned Citizens of South Central Los Angeles, Environmental Defense, the Latino Urban Forum, NRDC, and the Northeast Renaissance Corporation.²⁵⁹

The heart of the petition was the allegation that the City of Los Angeles had violated CEQA by adopting the Mitigated Neg Dec instead of requiring preparation of an EIR in connection with its review and approval of the site design plan submitted by Majestic Realty for the River Station project.

The Court's resolution of the petitioners' allegation was likely to hinge on two points of contention. First, there were differing views on the scope of Los Angeles Municipal Code (LAMC) Section 16.05, which sets forth the issues that should be addressed in a site design plan.²⁶⁰ Second, there were differing views on whether the petitioners had introduced sufficient evidence in the administrative record before the City of Los Angeles (acting through its City Council and Planning Department) to establish that there was a fair argument that the administrative record contained substantial evidence that approval of the site design plan may have a potentially adverse environmental impact.²⁶¹

According to Jan Chatten-Brown, one of the attorneys representing the petitioners:

[W]e believed absolutely . . . that we were going to be successful because under the California Environmental Quality Act the trig-

257. *Id.*

258. *Id.*

259. *Id.*

260. Chatten-Brown & Delvac, *supra* note 3, at 5.

261. *Id.*

ger for requiring an EIR is very low. It is simply whether there is substantial evidence to support a fair argument that there may be a significant adverse environmental impact, and we didn't believe that any judge could find a large, industrial development that would have hundreds of thousands of trucks attracted to it each year, adjacent to residential communities would not have a significant impact.²⁶²

William Delvac, the attorney representing Majestic Reality, however, held a much different view of how the court would likely approach CEQA's application to LAMC Section 16.05:

Site plan review in the city of Los Angeles is intended to be a relatively minor discretionary process that triggers environmental review under CEQA and ensures appropriate site development. . . . It is not intended, nor is it the appropriate process, to change zoning, limit the uses permitted under existing zoning or to require an alternate land use. . . . [Petitioners] were arguing to the City that it should require a different land use under site plan review and that an EIR should be prepared, if for no other reason than to explore alternatives.²⁶³

The hearing on the petition was set for early November of 2000.²⁶⁴ In the weeks prior to the hearing date, the parties moved forward with the legal briefing of their respective positions.²⁶⁵ During this same pre-hearing period, however, Majestic Realty's counsel William Delvac began to discuss an innovative settlement proposal with his client and the petitioners.²⁶⁶ This proposal amounted to a coin-toss with a winner-take-all outcome. Under this proposal, the litigation would be stayed before the hearing, and petitioners would be provided with a one-year option period to pull together the funds for the purchase of the Cornfield.²⁶⁷ If the petitioners were not able to secure the acquisition funds within this period, the petitioners would dismiss (with prejudice) their petition and cease all legal opposition to Majestic Realty's project.²⁶⁸

262. Jan Chatten-Brown, Remarks at "The Value of Urban Greenspace: Lessons from the Los Angeles Cornfield," Panel at the Annual Conference of the Real Property Law Section of the State Bar of California (Apr. 27, 2002) (transcript on file with author) [hereinafter Chatten-Brown Remarks].

263. Chatten-Brown & Delvac, *supra* note 3, at 5.

264. Chatten-Brown Remarks, *supra* note 262.

265. Chatten-Brown & Delvac, *supra* note 3, at 5. Although the referenced article was co-authored by Chatten-Brown and Delvac, the article contained separate sections setting forth the plaintiffs' and the real party-in-interest's perspectives on this litigation. These two sections of the article were drafted separately, and respectively, by Chatten-Brown and Delvac. The portions of the article cited in this footnote were drafted by Delvac.

266. *Id.* at 6.

267. *Id.*

268. *Id.*

As William Delvac recounted at the April 2002 California State Bar conference:

I went to [petitioners' counsel] and I said that the best outcome you'll get when you win the litigation is more litigation later. See, you can litigate and you can litigate, but you're never going to get a chance to buy the property. Here's the one time and only one time where we can make something happen, that you get not just a litigation victory, but the result you really want which is the different land use.²⁶⁹

From the petitioners' perspective, this coin toss proposal presented a great opportunity but was fraught with risks. The petitioners themselves did not have the financial means to purchase the Cornfield.²⁷⁰ As they considered this settlement option, a question for petitioners was therefore whether they could identify another buyer who was committed to the park alternative and who could be relied upon to step forward with the acquisition funds within the one-year option period.

In early November 2000, the petitioners surveyed the prospects for raising the necessary acquisition funds and concluded that the prospects were good.²⁷¹ This assessment was based in large part on two considerations.

First, in March 2000, California voters passed Proposition 12.²⁷² Among other things, Proposition 12 made approximately \$100 million in state funds available towards the creation of a Los Angeles River Parkway.²⁷³ The designation of funds for the Los Angeles River Parkway was due in large part to the efforts of State Assembly Speaker Villaraigosa, who had been an instrumental supporter of the reindustrialization project's opponents.²⁷⁴ The possibility of using such funds to obtain the Cornfield was uncertain. Proposition 12 funds were not specifically earmarked for the Cornfield, and the Cornfield was not technically adjacent to the banks of the Los Angeles River. Nevertheless, petitioners' discussions with state officials indicated that the site's close proximity to the river was sufficient to make it a potential recipient of such funds.²⁷⁵

Second, in the event that the state was not in a position to ac-

269. Delvac Remarks, *supra* note 210.

270. Chatten-Brown Remarks, *supra* note 262.

271. *Id.*

272. Chatten-Brown & Delvac, *supra* note 3, at 5.

273. *Id.*

274. *Id.*

275. Chatten-Brown Remarks, *supra* note 262.

quire the site within the proposed option agreement, the Trust for Public Land (TPL), a national nonprofit land conservation group headquartered in San Francisco, California, appeared financially able and willing to serve as the initial purchaser of the Cornfield.²⁷⁶ TPL's offer to play this bridge role was critical, because although it appeared likely that Proposition 12 funds would eventually become available for the public acquisition of the Cornfield, there was great concern among the petitioners that obstacles such as subsurface contamination might prevent the state from purchasing the site within the one-year option period proposed by Majestic Realty.²⁷⁷

The involvement of TPL, an established organization with recognized real estate expertise, also gave some measure of comfort to Majestic Realty. As William Delvac commented:

It became pretty clear early on in that series of negotiations that given that [Jan Chatten Brown's] clients were not real estate acquirers or developers and given that my clients weren't typically people doing environmental land deals, it was going to be necessary to bring in a party that both sides could trust, and have confidence in their business ability, their intentions and motives. That's why TPL played such a key and pivotal role²⁷⁸

In the midst of completing the briefing and preparing oral arguments for the approaching hearing, the parties therefore worked simultaneously on the draft of a settlement based on the coin-toss proposal. Just days before the hearing date, the parties reached agreement on the final terms of the settlement agreement and took the hearing of the CEQA petition off the calendar.²⁷⁹ The November 2000 settlement agreement contained many unique provisions, three of which merit particular attention.

First, the parties agreed that the appraisal of the Cornfield's value (for purposes of exercising the purchase option) would be based on the value of the site had the City of Los Angeles fully and

276. *Id.*

277. Chatten-Brown & Delvac, *supra* note 3, at 6:

The Trust for Public Land (TPL) was brought in to do the transaction, in the state's stead, because the state could not commit itself in the time required. Indeed, the state arguably could not acquire contaminated property and the site had not yet been remediated.

278. Delvac Remarks, *supra* note 210.

279. Settlement Agreement Between City of Los Angeles, Majestic Realty Parties, and Chinatown Yards Alliance (Nov. 2000) (on file with author) [hereinafter November 2000 Settlement Agreement].

lawfully approved the River Station project.²⁸⁰ Petitioners were aware that this assumption would significantly increase the Cornfield's appraised value, but agreed to this term because Majestic Realty would not proceed with the settlement without it.²⁸¹

Second, Majestic Realty and River Station LLC agreed to a "No Opposition" clause.²⁸² This clause provided that, during the one-year option period, they would not take any actions, direct or indirect, to oppose or interfere with public or nonprofit funding for the acquisition of the Cornfield, and moreover that they would assist and cooperate in efforts by TPL and others to secure such funding.²⁸³ If Majestic Realty or River Station LLC engaged in such opposition or refused such assistance, this would constitute a breach presumably entitling the petitioners to disregard the stay and to proceed to a hearing on the merits of their CEQA claims.²⁸⁴

Third, the petitioners agreed to a "Covenant Not to Oppose."²⁸⁵ Pursuant to this covenant, petitioners agreed not to pursue their pending legal opposition to the River Station project or other possible, future approvals related to the project during the option pe-

280. The assumptions for the appraisal were not included in the terms of the November 2000 Settlement Agreement, but were explained to the author by Nelson Mathews of TPL. Nelson Mathews, Remarks at Guest Lecture for Urban Environmental Law & Policy Seminar, Golden Gate University School of Law (July 2002) [hereinafter Mathews Guest Lecture].

281. *Id.* The terms of the appraisal were set forth in a separate Purchase and Sale Agreement between TPL and Majestic Realty, which was referenced in Section 1(a) of the November 2000 Settlement Agreement.

282. *Id.* § 1(c):

Majestic, River Station, and North Broadway each agree that they and their officers, shareholders, directors, partners, employees, attorneys and agents shall not take any actions, directly or indirectly, to oppose the provision of Public Funding from the State of California or other tax-exempt entity for the acquisition of the Property by or from TPL.

283. *Id.* § 8:

Petitioners, individually and collectively, covenant not to administratively or judicially oppose, litigate, sue, challenge, or contest the Project, the Project Approvals, or the Additional Project Approvals as defined in paragraphs 5 and 7. Further, Petitioners, individually and collectively, agree that after the date of signing this Agreement they shall not specifically state public opposition to the Project, the Project Approvals or the Additional Project Approvals, including without limitation comments to the media or to public forums; provided, however, Petitioners may continue to express their general desire for parks and 'greening' projects related or adjacent to the Los Angeles River, for parks generally and for equal access to parks and recreation.

284. *Id.*

285. *Id.*

riod.²⁸⁶ This covenant provided, however, that petitioners could continue to express their general desire for parks and greenspace along the Los Angeles River.²⁸⁷ Therefore, although the petitioners were provided with one year to raise the acquisition funds without opposition from Majestic Realty and River Station LLC, Majestic Realty and River Station LLC were also provided with one year to press forward with their reindustrialization plans without opposition from the petitioners.

Even after the stay of the CEQA litigation in November 2000, it should be noted that there was an additional important development in the underlying Cornfield lawsuit. On February 6, 2001, the California Attorney General's Office, headed by Attorney General Bill Lockyer, filed an amicus brief in support of the petitioners' position that preparation of an EIR was required.²⁸⁸ This amicus brief argued that the administrative record before the City of Los Angeles contained information indicating that Majestic Realty's River Station project would likely have significant impacts on air quality, subsurface contamination and historic resources. The brief further stated that Majestic Realty's current plans did not reduce these impacts to the levels of insignificance that made adoption of a Mitigated Negative Declaration (MND) permissible in this instance.²⁸⁹

In terms of air quality impacts, the California Attorney General's amicus brief maintained:

Despite the hundreds of vehicular trips that will involve vehicles using diesel fuel, there has been no analysis and no disclosure in the MND of the expected increase in exposure to diesel exhaust and diesel particulate in the exhaust. . . . The failure to adequately analyze the impacts from diesel emissions is particularly troubling in light of the fact that there are four schools nearby. Children have been identified as the group most at-risk from

286. *Id.* In an April 11, 2004, email to the author, Jan Chatten-Brown clarified that the petitioners' relinquishment of their right to oppose further approvals (related to the River Station project) was in fact an arguably insignificant relinquishment because at that time there were no other foreseeable approvals required. The only other possible approval had involved a challenge to the proposed federal HUD funding, which had already been withdrawn by HUD Secretary Andrew Cuomo at the time the November 2000 Settlement Agreement was signed.

287. *Id.*

288. Memorandum of Points and Authorities of Amicus Curiae, People of the State of California *ex rel.* Attorney General Bill Lockyer, In Support of Petition for Writ of Mandate, Friends of Los Angeles River v. City of Los Angeles, No. BS-065205 (Los Angeles Superior Court, memorandum filed Feb. 6, 2001) (on file with author).

289. *Id.* at 2.

these toxic emissions. . . . [T]he MND may not rely on the later approval process of the SCAQMD [Southern California Air Quality Management District]; it must spell out the mitigation for the foreseeable significant impacts of the project. There should be specific measures that will be implemented, rather than suggested regulation that may or may not be imposed in the future by another entity. Further, because the mitigation measures for impacts to air quality are not described, there is no substantial evidence that the adverse impacts of diesel exhaust emissions will be mitigated in any manner, let alone to a level of insignificance.²⁹⁰

In terms of impacts on historic resources, the amicus brief filed by the California Attorney General contended that the City disregarded information in the administrative record (referred to as the "AR" in the brief):

An intact portion of the [Zanja Madre] aqueduct was discovered in April of 2000, near the project site, and remnants of the Zanja Madre run through the property. (AR 3:333-336; 1:2062-2063.) Although the MND acknowledges this fact, there is still no analysis of this archaeological find or the possibility that more of the Zanja Madre may be found on the property. In lieu of mitigation, the MND merely states that, if more remnants of the canal are discovered, documentation of the resource will be conducted consistent with the Secretary of the Interior's Standard for Archaeological Documentation. (AR 3:333-336; 13:2498.) Under CEQA, more is required; preservation in place is the preferred manner of mitigating impacts to historical resources of an archaeological nature. Mere documentation of a historical resource during construction of a project that may destroy the resource does not alleviate the impacts of the destruction. Instead, a study of the extent of the Zanja Madre on the property and the project's impacts on the Zanja Madre should be done before construction begins, and reasonable alternatives and feasible mitigation should be considered.²⁹¹

The amicus brief filed by the California Attorney General underscored the risk and uncertainty for Majestic Realty should the Cornfield CEQA lawsuit proceed to a hearing on the merits.

VI. ACQUIRING THE CORNFIELD AS PUBLIC LAND: ANATOMY OF THE DEAL

Pursuant to the November 2000 settlement agreement, the first step was to have the Cornfield appraised. Again, this appraisal was to be based on an assumption that the City of Los Angeles had fully

290. *Id.* at 4-6 (citation omitted).

291. *Id.* at 8 (citations omitted).

and lawfully approved the River Station project.²⁹² This appraisal, performed by an appraiser selected jointly by TPL and Majestic Realty, came in at \$33.5 million.²⁹³

With the November 2000 settlement agreement in place, and the appraisal complete, TPL and the Chinatown Yards Alliance went to work. Two separate yet interrelated elements had to fall into place for petitioners to take advantage of the acquisition opportunity provided by the settlement. First, TPL needed to find a means to finance the \$33.5 million initial purchase of the Cornfield.²⁹⁴ Second, TPL needed an assurance that soon after its initial acquisition, the State of California would buy the property from TPL. The State of California was a necessary party because the City of Los Angeles was unable to provide the funds to purchase the site, and because TPL could not carry the burden of mortgage payments for very long.²⁹⁵ It was this second element that proved the more complex.

Largely as a result of the efforts of the members of the Chinatown Yards Alliance, California Governor Gray Davis and California State Parks announced their support for state acquisition of the Cornfield soon after the November 2000 settlement agreement was signed.²⁹⁶ This pledge of support, however, brought a new and thorny question to the forefront. California State Parks has a general policy of not acquiring property that requires additional subsurface remediation before it can be used as parkland.²⁹⁷ This policy, which stems from concerns about cleanup liability, means that sellers generally need to present a property to California State Parks in "turn-key" (ready for park use) condition.²⁹⁸ Given that previous environmental investigations had identified the presence of subsurface contamination at the Cornfield, this turn-key requirement emerged as an obstacle to plans to transfer the site to the state.

In response to this turn-key requirement, TPL and California

292. See *supra* note 280.

293. Nelson Mathews, Materials Submitted for "The Value of Urban Greenspace: Lessons from the Los Angeles Cornfield," Panel at the Annual Conference of the Real Property Law Section of the State Bar of California (Apr. 27, 2002) (on file with author) [hereinafter Mathews Materials].

294. Mathews Guest Lecture, *supra* note 280.

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

State Parks focused on efforts to quantify what the Cornfield's subsurface contamination meant in financial terms. More specifically, the following environmental questions needed to be answered: What was the extent and severity of the subsurface contamination throughout the site? How much would it cost to remediate the site to turn-key condition for a park? How long would it take to remediate the site to turn-key condition? What mechanisms were available to protect against potential cost-overruns related to the remediation necessary to restore the site to parkland condition?

To begin to answer these questions, TPL first needed to obtain access to the Cornfield to conduct additional subsurface testing. The previous environmental investigations had focused on certain discrete areas of the property and were not sufficient to fully characterize subsurface conditions at the site.²⁹⁹ Without this full characterization, TPL was not in a position to obtain assurances regarding what remediation the California Department of Toxic Substances Control (DTSC), the state agency exercising environmental oversight, would require to make the site ready for park use.³⁰⁰ Securing this access, however, proved somewhat complicated because of an arrangement between Majestic Realty and Union Pacific.

Although Majestic Realty had purchased certain development rights in connection with the Cornfield (including the right to purchase the site), Union Pacific still retained legal title to the property at the time the November 2000 settlement agreement was signed.³⁰¹ Union Pacific was not a party to the November 2000 settlement agreement and, as the present owner of-record of the Cornfield, it was concerned about the potential implications of allowing further subsurface testing.³⁰² Union Pacific was aware of the possibility that this additional testing might prompt DTSC to impose further cleanup requirements for the site, and that Union Pacific might be left to fulfill these obligations if the Majestic Realty or TPL acquisition plans somehow fell through. Union Pacific therefore was not prepared to provide TPL's environmental consultants with access to the Cornfield unless these liability concerns

299. *Id.*

300. *Id.*

301. Nelson Mathews, Remarks at "The Value of Urban Greenspace: Lessons from the Los Angeles Cornfield," Panel at the Annual Conference of the Real Property Law Section of the State Bar of California (Apr. 27, 2002) (transcript on file with author) [hereinafter Mathews Conference Remarks].

302. Mathews Guest Lecture, *supra* note 280.

were first addressed.³⁰³

In the end, the issue of access was resolved when Majestic Realty agreed to an outright purchase of the Cornfield from Union Pacific.³⁰⁴ Although Majestic Realty was obligated to cooperate with TPL and the Chinatown Yards Alliance pursuant to the November 2000 settlement, it is highly unlikely that the courts would have interpreted this contractual cooperation obligation to compel Majestic Realty to purchase the property in order to facilitate access to the petitioners. However, it is possible that the Chinatown Yards Alliance plaintiffs that were parties to the November 2000 settlement agreement could have argued successfully that Majestic Realty did not fully disclose its limited ownership interest in and access rights over the Cornfield, and that this non-disclosure improperly induced them to enter into the settlement.

Although there were risks to Majestic Realty in allowing TPL's acquisition efforts to falter because of Union Pacific's refusal to provide site access, Majestic Realty's willingness to acquire the Cornfield from Union Pacific was also an indication that the dynamics between the parties had begun to change. At the time the November 2000 settlement agreement was signed, Majestic Realty was convinced that the option would not be exercised and that the River Station project would proceed as planned after a year's delay. As Majestic Realty's attorney William Delvac commented: "I think Majestic sincerely believed that the funding would never be there and that there would never be a sale."³⁰⁵

Soon after the November 2000 settlement agreement was announced, however, there was a surge in public and political enthusiasm for and commitment to the park alternative.³⁰⁶ Although Majestic Realty was committed to receiving adequate compensation for its investment in the River Station project, it was not immune to this enthusiasm. As the public and political tide began to turn, increasingly Majestic Realty wanted to be perceived as a participant (albeit a self-interested and an initially reluctant participant) rather than an opponent to efforts to secure the Cornfield as public parkland.³⁰⁷ As Nelson Mathews, TPL's point person for the Cornfield negotiations, stated at the April 2002 California State Bar

303. *Id.*

304. Mathews Conference Remarks, *supra* note 301.

305. Delvac Remarks, *supra* note 210.

306. Mathews Guest Lecture, *supra* note 280.

307. *Id.*

Conference: "The end result was Majestic stepped up and bought the property from Union Pacific which was an increase in their risk. I salute them for doing that because they provided us with the access to get out there and test the property."³⁰⁸

Majestic Realty's motivations for its change in position were most likely multifaceted. With the November 2000 settlement agreement in place, the company was guaranteed a reasonable rate of return on its investment even if TPL was able to raise the necessary acquisition money. If the Chinatown Yards Alliance plaintiffs were successful in arguing that they were fraudulently induced into entering into the settlement (due to non-disclosure of Majestic Realty's limited ownership interest), and these plaintiffs ultimately prevailed on their CEQA claim, then the value of the Cornfield property would be far less than it would be under the terms of the settlement. Given these considerations, and in light of the public relations problems it would face if it were to set itself against a project that had garnered widespread public and political support, Majestic Realty's actions begin to make business sense.

Once Majestic Realty owned the Cornfield, TPL's environmental consultants were provided access to complete the additional testing and characterization of the site's subsurface conditions. As a result of this additional testing and characterization, TPL's environmental consultants estimated that it would cost between \$1 million and \$3.5 million to clean the site to a condition where DTSC would permit the use of the property as public parkland.³⁰⁹ Although these cleanup cost estimates were not great in proportion to the \$33.5 million appraisal, the California State Parks' turn-key requirement remained a problem. TPL's environmental consultants estimated it could take several years to complete the remediation and restore the Cornfield to turn-key condition. However, TPL was not in a position to hold title and to make payments on the site during this multi-year remediation process.³¹⁰

The turn-key question was ultimately resolved through a two-fold approach. First, although TPL would sell the site to the State of California, TPL would remain responsible for performing the remediation required by DTSC to restore the property to a condition suitable for parkland purposes.³¹¹ Second, TPL purchased an

308. Mathews Conference Remarks, *supra* note 301.

309. *Id.*

310. Mathews Guest Lecture, *supra* note 280.

311. *Id.*

environmental insurance policy that provided coverage for cost overruns which might be associated with cleanup of the identified contamination, and \$10 million in coverage for unknown environmental conditions.³¹² Along with TPL, the State of California was named as an additional insured on this environmental insurance policy.³¹³ With these liability-shifting and insurance mechanisms in place, the State of California agreed to purchase and accept title to the Cornfield even though the site was not yet in park-ready environmental condition.

As the pieces for the park alternative began to fall into place, Majestic Realty agreed to extend the November 1, 2001 option deadline by several weeks.³¹⁴ The willingness of Majestic Realty to grant this extension was one more indication of how the dynamics between the parties to the November 2000 settlement agreement had shifted over the course of the year.

On December 21, 2001, California Governor Gray Davis held a press conference on the Broadway bluffs of Chinatown overlooking the Cornfield.³¹⁵ Present for the press conference were a sea of children from the surrounding neighborhoods, and representatives from numerous member-organizations of the Chinatown Yards Alliance, from TPL, and from Majestic Realty.³¹⁶ Also present was newly-elected Los Angeles Mayor James Hahn who, unlike his mayoral predecessor Richard Riordan, had voiced his support for the park alternative.³¹⁷ At the base of the Broadway bluffs, a mere thirty feet below where the press conference microphones and

312. *Id.*; see also Mathews Materials, *supra* note 293; Markus Niebanck, Cornfield Report (2003) (unpublished report on file with author) [hereinafter Niebanck Report]. Niebanck, who oversaw TPL's remediation of the Cornfield, explains:

In addition to generating data relative to the nature and distribution of site contamination, comprehensive site investigations are designed to satisfy the underwriting requirements for environmental insurance. The results of the Cornfield investigation provided the technical underpinning for the acquisition of two such insurance policies. The first, environmental cost cap coverage, provided a measure of safety in the event that ensuing remedial action required financing in excess of what initial investigative data suggested reasonable. The second coverage protected against the discovery of site contamination at a date after the site cleanup was complete.

Mathews Materials, *supra* note 293.

313. Mathews Guest Lecture, *supra* note 280.

314. *Id.*

315. Matea Gold, *State Plans 2 Parks By L.A. River*, L.A. TIMES, Dec, 22, 2001, at Part 2, 1.

316. *Id.*; Mathews Guest Lecture, *supra* note 280.

317. Gold, *supra* note 315. During the mayoral campaigns, Hahn was serving as Los Angeles City Attorney and his office represented the City of Los Angeles in the Cornfield

cameras were positioned, lay the excavation site where the remains of the original Zanja Madre had been located just a year earlier.

At the December 21, 2001 press conference, Governor Davis announced that with funds made available by the passage of Proposition 12, California State Parks was acquiring the thirty-two flatland acres of the Cornfield site for \$36 million.³¹⁸ The Santa Monica Mountains Conservancy, another state agency, would acquire the remaining eight acres of the bluff.³¹⁹

The Chinatown Yards Alliance's gamble had paid off. The option was exercised by TPL, the River Station project was stopped, and the Cornfield was on its way to becoming an urban state park. As Mayor Hahn remarked at the December 21, 2001 press conference: "It is a great day for the people of Los Angeles because an old railyard that has been an eyesore for many years is now going to provide open space and green land in the heart of downtown."³²⁰

VII. A CORNFIELD STATE PARK TAKES SHAPE

In early 2002, the debate over the Cornfield shifted from whether it would be a park to what type of park it would be. Although the latter debate lacks the courtroom and political drama of the former debate, it is nonetheless proving complex to resolve as well. This is due to the diverse nature of the Chinatown Yards Alliance.

Although the members of the Chinatown Yards Alliance were united in their opposition to Majestic Realty's reindustrialization project, these members also held contrasting visions of the park that should be built. These contrasting visions were based in large part on the different histories, cultural preferences, and perceived needs of those groups with a stake in and connection to the Cornfield.

Perhaps the clearest illustration of these contrasting visions can be found in the March 2001 conceptual plan prepared for the Chinatown Yards Alliance by architect and planner Arthur Golding

CEQA litigation. Given the pending lawsuit, Hahn therefore did not express his support for the park alternative until after the mayoral election.

318. *Id.*

319. *Id.*; see also Chatten-Brown Materials, *supra* note 167.

320. Gold, *supra* note 315; The Trust for Pub. Land, *TPL and Davis Deliver a Gift to L.A.*, at http://www.tpl.org/tier3_cd.cfm?content_item_id=7265&folder_id=266 (last visited Mar. 15, 2004).

(Golding Conceptual Plan).³²¹

The Golding Conceptual Plan was created to articulate and give form to the alternative park vision for the Cornfield. It was designed to appeal to the broad array of community, interest group, and political stakeholders that could be marshaled to help ensure the demise of Majestic Realty's reindustrialization project and the success of TPL's and California State Park's acquisition efforts.³²² The centerpiece of the Golding Conceptual Plan was a landscape map that depicted the elements, structures, and uses that a non-industrialized Cornfield might contain.³²³ Among other things, this landscape map included: a Zanja Madre Museum; a Chinatown Pavilion Cultural Center (which would house a California State Parks office); a Shaolin Institute; soccer fields; a bicycle path; a magnet school with accompanying auditorium, library and gymnasium; a "Zanja Nueva" stream that would divert some of the waters of the Los Angeles River through the property; a new Blue Line Light Rail Station; and a "Great Meadow."³²⁴ This was much to ask of a forty-acre site, eight acres of which consisted of relatively inaccessible steep bluff.

The Cornfield is blessed and burdened with complex histories. It is adjacent to the site of early Native American settlements that are the roots of why and where downtown Los Angeles exists. It is part of the story of Spanish Missionaries' arrival in Southern California. It is linked to the settlement, relocation, and racism involving the city's Latino, Chinese, and African-American citizens. It evokes how the Los Angeles River defined the area's ecology before it was entombed in concrete. Its railyards, notwithstanding the subsurface contamination left behind, represent a critical piece of the city's economic and transportation legacy. A park on the site therefore potentially has much to say.

As the 2000 UCLA-Occidental College Report on the Cornfield noted:

Debate over the history of the Cornfield site, then, is as much about constructing 'whose history' and 'whose identity' as it is about 'what history.' Constructing history is an immense undertaking in itself, full of inaccuracy and bias and, in essence, unver-

321. 2001 Conceptual Plan Materials provided to author by Arthur Golding (on file with author) [hereinafter Golding Conceptual Plan].

322. *Id.* This was also the subject of a July 11, 2002, phone conversation between author and Arthur Golding.

323. *Id.*

324. *Id.*

ifiable. . . . Constructing history as a narrative is a process of remembering, and has a very personal tie to identity. Attacks on historical narratives are thus construed as attacks on personal ideologies, and the underlying drama takes on a far more emotional aspect than simple historical concern.³²⁵

This is not to say that, in the context of designing the new Cornfield park, there may not be ways to bring these multiple histories into a coherent and complementary whole. Rather, it simply reveals that the different park stakeholders bring a different set of priorities to the park planning process.

Consider, for example, the contrasting perspectives of two of the most prominent founding members of the Chinatown Yards Alliance, the Latino Urban Forum, and FoLAR.

The Latino Urban Forum is not opposed to honoring the legacy or improving the ecology of the Los Angeles River. Its involvement in the Chinatown Yards Alliance, however, was motivated more by the goal of securing additional recreational space for the Latino community in the vicinity of the Cornfield. The creation of grass soccer fields for Latino youth was and is a paramount concern. In December 2002, Robert Garcia and others at CLIPI published a report entitled *Dreams of Fields: Soccer, Community, and Equal Justice*.³²⁶ Among other things, *Dreams of Fields* argued:

The history of the Cornfield is the history of struggle, hope, and triumph for the community. Children who dream of soccer fields and their families and friends are entitled to equal access to playing fields in the parks they struggled to create.

. . . .

Fields for soccer squarely fulfill the State Parks mission. The primary State Parks mission is to provide for the "HEALTH, INSPIRATION, and EDUCATION of the People of California," and to do this by "creating opportunities for high-quality outdoor recreation" and "protecting its most valued NATURAL and CULTURAL RESOURCES." Soccer fulfills these five elements for individuals and the community. Soccer improves human health, inspires players and fans, and educates players through life-long lessons in teamwork, leadership, and self-esteem. Soccer is played on a flat open space in harmony with natural settings.

Soccer is among the most valued cultural and historical re-

325. CENZATTI ET AL., *supra* note 2, §2 at 56-57.

326. ROBERT GARCIA, ERICA S. FLORES, ELIZABETH PINE & THE CTR. FOR LAW IN THE PUB. INTEREST, *DREAMS OF FIELDS: SOCCER, COMMUNITY, AND EQUAL JUSTICE* (Report on Sports in Urban Parks to the California Department of Parks and Recreation) (Dec. 2002) [hereinafter *DREAMS OF FIELDS*].

sources of Latino and other immigrant communities.³²⁷

FoLAR, for its part, is not opposed to soccer, soccer fields or providing recreational opportunities to Latino youth. FoLAR's involvement in the Chinatown Yards Alliance, however, was prompted by the goal of having the Cornfield site contribute to the greater revitalization of the Los Angeles River and its riverfront lands.³²⁸ As such, FoLAR has an interest in ensuring that the Cornfield park contains a strong water element. This water element could involve diverting some of the waters of the Los Angeles River across the site (such as through the "Zanja Nueva" proposed in the Golding Conceptual Plan) or perhaps through extending the Cornfield park so that it is actually adjacent to the river's banks. As Jan Chatten-Brown explained at the April 2002 California State Bar Conference, the parcel of land that separates the northeast corner of the Cornfield (near the North Broadway Bridge) from the river is currently being used as a staging ground for construction of the Pasadena Gold Line, part of the city's new light rail public transit system.³²⁹ FoLAR is understandably interested in exploring the feasibility of adding this parcel to the Cornfield park once its use as a construction staging area ends.³³⁰

The Latino Urban Forum and FoLAR represent just a few of the many histories and priorities seeking recognition in the new park.

To provide a framework to discuss and hopefully resolve the diverging views of what a park on the Cornfield site should be, the State Senate Bill authorizing California State Parks' acquisition of the Cornfield also included provisions for the establishment of a Cornfield State Park Advisory Committee (Park Advisory Committee).³³¹ One of the responsibilities of the Park Advisory Committee is to provide the Director of California State Parks with "a list of prioritized development recommendations for long-range plans for the site that meet the needs of Californians and the general public, including park and recreational facilities and programs serving residents within communities surrounding the Cornfield rail yards in central Los Angeles."³³² A summary of the Park Advisory Committee's recommendations is provided at the end of this

327. *Id.* at 3-5.

328. Interview with Lewis MacAdams, *supra* note 219.

329. Chatten-Brown Remarks, *supra* note 262.

330. *Id.*

331. Cal. Sen. Bill 1177 (signed by Governor Davis on Sept. 28, 2001).

332. *Id.*

section. An evaluation of these recommendations, however, is aided by some preliminary discussion of the policy issues that face urban parks in general and the Cornfield park in particular.

A. *Eyes-on-the-Park*

One of the most thoughtful examinations of the role of urban parks in the United States was presented by Jane Jacobs in her 1961 work *The Death and Life of Great American Cities*.³³³ This book contained an expansive chapter entitled "The Uses of Neighborhood Parks" in which Jacobs challenged the notion that urban parks are, by their very nature, beneficial from a community standpoint.³³⁴ According to Jacobs, whether a particular urban park serves as a dangerous crime zone or a cherished neighborhood asset depends largely on the mixture of buildings that surround a park and how this mixture affects who uses the park and when.³³⁵ As her statements below reveal, Jacobs concluded that a more critical assessment of the urban parks question was needed:

Conventionally, neighborhood parks or parklike open spaces are considered boons conferred on the deprived populations of cities. Let us turn this thought around, and consider city parks deprived places that need the boon of life and appreciation conferred on *them*.³³⁶

Jacobs argues that:

In orthodox city planning, neighborhood open spaces are venerated in an amazingly uncritical fashion, much as savages venerate magical fetishes.

. . . .

More Open Space for what? For muggings? For bleak vacuums between buildings? Or for ordinary people to use and enjoy? But people do not use city open space just because it is there and because city planners or designers wish they would.

. . . .

It is necessary too, in understanding park behavior, to junk the false reassurance that parks are real estate stabilizers or community anchors. Parks are not automatically anything, and least of all are these volatile elements stabilizers of values or of their neighborhoods and districts.

333. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (Modern Library Random House 1993) (1961).

334. *Id.* at 116-45.

335. *Id.*

336. *Id.* at 116.

....

Unpopular parks are troubling not only because of the waste and missed opportunities they imply, but also because of their frequent negative effects. They have the same problems as streets without eyes, and their dangers spill over into the areas surrounding, so that streets along such parks become known as danger places too and are avoided.³³⁷

Finally, Jacobs states:

City parks are not abstractions, or automatic repositories of virtue or uplift, any more than sidewalks are abstractions. They mean nothing divorced from their practical, tangible uses, and hence they mean nothing divorced from the tangible effects on them—for good or for ill—of the city districts and uses touching them. Generalized parks can and do add great attraction to neighborhoods that people find attractive for a great variety of other uses. [But, t]hey further depress neighborhoods that people find unattractive for a wide variety of other uses, for they exaggerate the dullness, the danger, the emptiness.³³⁸

Jacobs' immediate reference point for her comments regarding urban parks were those open spaces created as part of the federally-funded urban renewal projects of the 1950s and early 1960s.³³⁹ These were housing projects usually built on the site of recently cleared neighborhoods.³⁴⁰ Most of these cleared neighborhoods were primarily African-American, and the housing projects were generally undertaken over the objections of the people whose homes and businesses were destroyed to clear the land.³⁴¹ Jacobs' comments therefore apply particularly to those urban parks that are imposed upon already distressed communities by outside planners.

The park at the Cornfield site, whatever form it ultimately takes, is fortunate to have been born under circumstances that are quite different from those of many of the parks discussed in Jacobs' book. The Cornfield site was not secured as parkland as a result of

337. *Id.* at 117-23.

338. *Id.* at 145.

339. *Id.* at 122 ("One of the bitterest disappointments in housing project history is the failure of the parks and open grounds in these establishments to increase adjacent values or to stabilize, let alone improve, their neighborhoods."); *Id.* at 132 ("But there is no point in bringing parks to where the people are, if in the process the *reasons* that the people are there are wiped out and the park *substituted* for them. This is one of the basic errors in housing-project and civic- and cultural-center design."); *see also generally* MARTIN ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962* (1964).

340. *See generally* ANDERSON, *supra* note 339.

341. *Id.*

the destruction of an existing neighborhood, nor was it the result of a plan imposed on an existing community by outside planners. Rather, the Cornfield site was secured as parkland because of the political demand for such parkland by the surrounding neighborhoods. As such, these communities have a commitment to and a sense of ownership in the Cornfield park site that is far removed from many of the park scenarios described by Jacobs.

Notwithstanding the Cornfield park site's favorable origins, many of the points raised by Jacobs still have applicability to evaluating what type of park the Cornfield might become. Of particular importance, Jacobs notes that parks should be used by diverse groups of people, in diverse ways, and at diverse times.³⁴² An urban park (or a portion of a park) that is infrequently occupied or is not surrounded by buildings where there are "eyes-on-the-park" is in danger of becoming a vacuum that depresses rather than enhances adjacent communities.³⁴³ This means that the success of the park at the Cornfield site will depend in large part on the vitality of the areas that border the park.

This eyes-on-the-park consideration bodes well for those northern areas of the Cornfield site, along Chinatown's Broadway bluffs, but does not bode well for the long stretch of the southeastern portion of Cornfield site along Spring Street. Unlike the residences, restaurants, and late-night street activity on Broadway, much of the area adjacent to the Spring Street side of the park is lined with industrial warehouses that close at night.³⁴⁴ This means that, under present circumstances, in the evenings much of the southern edge of the Cornfield park will be fronted by a street with no pedestrians, no residents, and no open businesses.³⁴⁵ These are the conditions surrounding a park that can result in the unwatched dead-zone urban open space warned of by Jacobs. These conditions also suggest that the Cornfield park would benefit from additional residences, restaurants, and nightlife along the parkside stretch of Spring Street, and that these adjacent land-use changes should be evaluated as part of the park planning process.

B. *Traces of History*

The communities that have lived and continue to live near the

342. JACOBS, *supra* note 333, at 125-26.

343. *Id.* at 123.

344. Interview with Lewis MacAdams, *supra* note 219.

345. *Id.*

Cornfield have rich histories. The Cornfield site—with its early irrigation canal, its ties to the once wild and unpaved Los Angeles River, and its prominence in the city's railroad past—is also a place of great historical significance. In terms of incorporating these elements into the new park, however, the challenge is that very little of this history is reflected in the remaining physical artifacts or structures on the site.

This challenge was discussed in the 2000 UCLA-Occidental College Report:

Recent developments in preservation planning and legislation have brought greater attention to the non-physical aspects of history, especially in relation to a historic sense-of-place. By including cultural landscapes and addressing issues of historic importance rather than solely historic artifacts, the issue of what is to be preserved is made richer, but also more complex.³⁴⁶

It continues:

The paradox of the Cornfield is that while the site has played a significant role in the development of Los Angeles, few physical traces remain.

The Cornfield' [sic] significance derives largely from the associations of cultural groups with the area, and their history and development. To this end, the discussion of cultural heritage and cultural landscapes are the most important for the future of the Cornfield, and serve as the basis for an argument to include these groups in planning action and decision-making. These cultural groups include the Chinese-American and Mexican-American groups which have long lived and worked in the area. . . . Not to be forgotten are the original inhabitants—the Gabrielinos—whose village of Yangna formed the basis for the siting of today's Los Angeles.³⁴⁷

With the Cornfield site, therefore, the park cannot reasonably be characterized simply as an effort to preserve history. Rather, the park must also be understood as an effort to design a new public space with structures and uses that evoke and honor certain ethnic, cultural, and ecological connections that are no longer visible on the site. The Cornfield park planning process is therefore inherently a blend of restoration, preservation, and creation.

C. 2003 Park Advisory Committee Report

The thirty-six members of the Park Advisory Committee were selected by California State Parks from a pool of more than a hun-

346. CENZATTI ET AL., *supra* note 2, § 2 at 62.

347. *Id.* at 66.

dred applicants.³⁴⁸ Members include several of the individuals involved in the Chinatown Yards Alliance's efforts to stop Majestic Realty's River Station project, such as Chi Mui (of the Chinese Benevolent Society Association and formerly of State Senator Polanco's office), Robert Garcia of CLIPI, Lewis MacAdams of FoLAR, and Joel Reynolds of NRDC.³⁴⁹

From the spring of 2002 through the spring of 2003, the Park Advisory Committee met regularly to work on its proposed design recommendations. In April of 2003, the Park Advisory Committee presented a report to the Director of California State Parks entitled *A Unified Vision for Cornfield State Park (Unified Vision)*.³⁵⁰ The introductory section to *Unified Vision* acknowledges the challenge of stitching the diverse Cornfield histories and stakeholders into a single park plan:

Throughout its process, the Committee invited experts to address the group, including George Hargreaves, the Chairman of the Department of Landscape Architecture in the Harvard Graduate School of Design. A leading urban park designer, Professor Hargreaves urged the Committee to develop a visionary sense of place at the Cornfield, not just a list of recommended uses. He advised the Committee to be cognizant of the "carrying capacity" of a 32-acre site and to strive for an "organic whole" rather than creating a patchwork, "balkanized" space that seeks to accommodate a multiplicity of interests. A single park, he noted could not meet the Los Angeles Basin's entire park, restoration and open space needs.³⁵¹

Unified Vision then goes on to identify and discuss the four essential themes it believes should guide the design of a Cornfield State Park: connectivity; cultural-historical, including the role of water in the development of the region; recreation; and transportation.³⁵²

In the section on the connectivity element, *Unified Vision* provides:

A critical issue is the development of the Cornfield site into the broader design of a Los Angeles River greenway. Though only 32 acres in size, the park is a critical component and the first jewel in an emerald bracelet of the emerging Los Angeles River greenway stretching from the San Gabriel Mountains to the Pacific Ocean.

348. *Unified Vision*, *supra* note 206, at 1.

349. California State Parks, Roster of Cornfield State Park Advisory Committee (2002) (on file with author).

350. *Unified Vision*, *supra* note 206.

351. *Id.* at 5.

352. *Id.* at 2.

....

Park users should experience a feeling of connection with the adjoining river greenway. One way to achieve this is with key design elements such as vegetation, art, water features, benches, lighting, and interpretation. The park should provide visitors a sense of shade and sanctuary.

....

Fundamental to this goal of Greenway connectivity is the acquisition of suitable transitional parcels adjacent to the Cornfield. On the north, the Midway Railroad Yard, designated by the MTA [Metropolitan Transportation Authority] as a "temporary" staging area for the Pasadena Gold Line, is the only way to connect the Cornfield to Elysian Park and the River.

....

In addition, the Cornfield should help connect human communities. . . . [T]he Cornfield could anchor not only a physical "green-belt" but a rich multi-ethnic cultural corridor of communities and historic districts that exists through Northeast and Central Los Angeles to the City's birthplace of El Pueblo and the Little Tokyo historical district.³⁵³

In the section on the cultural-historical element, *Unified Vision* states:

The value of the Cornfield lies in its potential to slice through time, connecting these larger historical and social patterns to the personal stories relevant to the contemporary experience of Angelinos. It will serve as a touchstone through which all of us can come to see how we fit into the greater Los Angeles story.³⁵⁴

In the section on the recreation element, *Unified Vision* maintains:

The Cornfield should include as part of its legacy a balanced park that includes large open area for soccer and other sports, integrated harmoniously with the natural setting and the cultural and historical values at stake in this urban California State Park.³⁵⁵

In the section on the transportation element, *Unified Vision* suggests:

Transportation has long been prominently associated with the Cornfield site, from the railroads and trolleys in the recent past to the Gold Line currently under construction and the freeways that criss-cross the neighboring communities. Design could both recognize this history and embrace environmentally-friendly

353. *Id.* at 8.

354. *Id.* at 9-10.

355. *Id.* at 13.

transportation systems within the Cornfield, its adjacent communities and all nearby cultural and recreational points of interest.

....

Transportation within the park, whether pedestrian, equestrian, bicycle, transit, parking or national historical trails, should link up with systems outside the park. Transportation systems must be integral to park and recreational uses and designed in a manner consistent with retaining, to the maximum extent possible, land available for other park purposes.³⁵⁶

At present, it is still unclear how the ideas and considerations reflected in these four themes can or should be woven together to create a unified vision that avoids the type of balkanization warned of by Professor Hargreaves. The creation of a park with different sections of parkland reserved for different ethnic or stakeholder constituencies remains a possibility. The Park Advisory Committee appears cognizant of this potential scenario and seems philosophically committed to preventing its realization, yet how this will translate on-the-ground remains to be seen. The difficulty will be finding ways to design a coherent, compact urban greenspace that somehow recognizes and serves the varied communities, histories, and interests that have coalesced on and around the Cornfield.

An important test of this unified vision will be the selection of the park's name. At present, several potential candidates present themselves: Cornfield State Park, Zanja Madre State Park, Yangna State Park, Chinatown Yards State Park, Railyard State Park. The Park Advisory Committee's comments on the naming question are indicative of both the troubles and opportunities that may lie ahead for the park:

The Committee is unanimous in its view that the park name is extremely important. It sets the tone for public acceptance and initiates the thought processes for marketing. While stopping short of recommending a specific name, the Committee recommends that the site name should both reflect the rich historic and cultural heritage of the area and convey a relevant statement that will appeal to all ages.³⁵⁷

The general sentiment expressed in these comments may enjoy the support of the varied interests represented on the Park Advisory Committee, but it is not altogether clear how this sentiment will ultimately contribute to resolving the question of the park's

356. *Id.* at 13-14.

357. *Id.* at 15.

name. The same could also be said about the actual physical form the park will take.

VIII. CORNFIELD LESSONS FOR LOS ANGELES, CALIFORNIA, AND THE NATION

The process by which the Cornfield was reclaimed as riverside parkland contains many elements that are situation-specific. These include the presence of historic Zanja Madre remnants on the property and the willingness of Majestic Realty to engage in the type of creative negotiations that ultimately led to the November 2000 settlement agreement.

Notwithstanding these particularities, there are elements of the Cornfield story that have broader application and import. Such elements include the economic risks to urban developers who disregard community opposition to reindustrialization proposals for vacant land, the growing recognition of the greenspace opportunities created by former urban railyard sites, and the potential role of the federal government in restoring urban rivers and adjacent riverfront land.

A. *Lessons for Los Angeles: The 2001 Taylor Yard Acquisition*

Upstream from the Cornfield, and on the other side of the Los Angeles River, is a series of contiguous former and current Union Pacific Railroad properties known collectively as Taylor Yard.³⁵⁸ One of the Taylor Yard properties is a forty-acre riverfront site referred to as Parcel D.³⁵⁹

Taylor Yard's Parcel D is similar to the Cornfield in many respects. It is similar in size. It has subsurface contamination from its previous railway uses.³⁶⁰ In the early 1990s, the site was identified by the surrounding community and environmentalists as potential public parkland.³⁶¹ In the late 1990s, Florida-based Lennar Partners (Lennar) proposed a project on the site with 650,000 square

358. Coalition for a State Park at Taylor Yard, *Taylor Yard: Parcels*, at <http://www.tayloryard.org/parcels.html> (last visited Feb. 13, 2004).

359. *Id.*

360. Coalition for a State Park at Taylor Yard, *Taylor Yard: History*, at <http://www.tayloryard.org/history.html> (last visited Feb. 13, 2004) [hereinafter *Taylor Yard History*].

361. *Id.* The parkland possibilities for Taylor Yard were addressed at the 1998 *The River Through Downtown* conference, as well as in other studies, such as the 1992 report, *Taylor Yard: A Catalyst for Community Change*, by the Taylor Yard Area Planning and Urban Design Workshop (Oct. 1992).

feet of new industrial warehouse space.³⁶² In connection with its approval of the Lennar warehouse project, the City of Los Angeles adopted a Mitigated Neg Dec under CEQA instead of requiring preparation of an EIR.³⁶³ What distinguishes Taylor Yard's Parcel D from the Cornfield is the manner in which Lennar responded to legal opposition to its project.

When the Mitigated Neg Dec was adopted for the Lennar reindustrialization project, this decision was challenged in a lawsuit filed by a number of community and neighborhood groups that had banded together to form the Coalition for a State Park at Taylor Yard. The cast of organizations and individuals involved in the Taylor Yard CEQA litigation overlapped considerably with those involved in the previous Cornfield CEQA litigation. For instance, the petitioners in the Taylor Yard lawsuit included FoLAR, Latino Urban Forum, and NRDC, and these petitioners were once again represented by Jan Chatten-Brown of Chatten-Brown & Associates.³⁶⁴

Unlike Majestic Realty, however, Lennar did not pursue settlement negotiations with the petitioners. The Taylor Yard CEQA lawsuit went to a full hearing on the merits, at which the court set aside the Mitigated Neg Dec and ordered preparation of a full EIR.³⁶⁵ After the hearing, recognizing that the EIR preparation could set back the project several years, Lennar approached California State Parks about the possible purchase of Parcel D for parkland.³⁶⁶ Following the outcome of the CEQA lawsuit, however, the value of Lennar's Parcel D had decreased markedly.³⁶⁷ Moreover, there was no Trust for Public Land (TPL) to step in and deal with the problem of restoring the site to the turn-key environmental condition required by California State Parks. In December 2001, Lennar and Union Pacific (which had retained title to ten of Parcel D's forty acres) sold Taylor Yard's Parcel D to the State of California for parkland, but at a price and under conditions much less favorable to Lennar and the railroad than those at which Majestic Realty was able to sell the Cornfield.³⁶⁸

A comparison of the Cornfield and Taylor Yard situations yields potential lessons for developers proposing to reindustrialize vacant

362. *Taylor Yard History*, *supra* note 360.

363. *Id.*

364. *Id.*

365. *Id.*

366. Chatten-Brown Remarks, *supra* note 262.

367. *Id.*

368. *Id.*; see also Chatten-Brown & Delvac, *supra* note 3, at 7.

urban land in the face of widespread community and environmental opposition. Before forcing opponents to take the controversy to a trial on the merits, such developers might first want to undertake a sober appraisal of the risks associated with such a trial and, if these risks appear significant, seriously explore settlement opportunities. It is a course of action that Majestic Realty pursued to its benefit, and that Lennar did not to its detriment.

B. *Lessons for California: 2003 Railyard Revitalization Workshop*

The situation with the Cornfield and Taylor Yard is reflective of the status of many former railyard sites throughout California. Many of these railyards are located in downtown, urbanized areas, contain both historic structures and extensive subsurface contamination, and are surrounded by communities that are traditionally park-poor. These sites therefore present both challenges and opportunities. As Michael Casey, director of special properties for Union Pacific Railroad, noted: "Because [abandoned railyards] are big doughnut holes in the middle of urban areas, there's no lack of ideas about what do to with them."³⁶⁹

To help collect and generate such ideas, on November 20, 2003, the California Center for Land Recycling (CCLR) hosted an all-day workshop in the state capital, Sacramento, entitled *Next Stop: Rail Yard Revitalization*.³⁷⁰ CCLR is a nonprofit organization based in San Francisco, focused on redeveloping contaminated brown-field sites (sites with known or potential subsurface contamination). The *Next Stop* workshop was held, appropriately, at the California State Railroad Museum.³⁷¹

The event included a panel session entitled "From Railways to Greenways, Open Space and Recreational Activities."³⁷² Markus Niebanck, the TPL environmental consultant responsible for overseeing the environmental remediation of the Cornfield, was a presenter on this panel.³⁷³ Niebanck discussed the particular role that TPL played in the successful transformation of the Cornfield to parkland, and outlined other ways that private land trusts such as

369. Todd Johnson, *Rail Yard Infill*, URB. LAND, June 2003.

370. CAL. CTR. FOR LAND RECYCLING, WORKSHOP MATERIALS FOR NEXT STOP: RAIL YARD REVITALIZATION, Cal. State Railroad Museum, Sacramento, Cal. (Nov. 20, 2003) (on file with author).

371. *Id.*

372. *Id.*

373. *Id.*

TPL can assist in moving railyard-to-greenspace projects forward.³⁷⁴

The November 2003 *Next Stop* workshop also included a session on the plans for the former Union Pacific Sacramento Railyard.³⁷⁵ This 247-acre site is adjacent to the Sacramento River,³⁷⁶ a waterway that, unlike the Los Angeles River, flows year-round and is in a much more natural state. The plans for the Sacramento Railyard are similar to the Cornfield plans in that they involve environmental remediation, riverfront considerations, historic structure preservation, and the creation of new parkland.³⁷⁷ However, the Sacramento Railyard plans also call for the construction of new office, residential, and bus transportation space.³⁷⁸

The *Next Stop* workshop went on to offer case studies of other railyard revitalization projects around the state, such as the Truckee Railyard near Lake Tahoe and the renovation (for retail and residential space) of historic Central Station in West Oakland.³⁷⁹ CCLR's *Next Stop* workshop evidences the growing interest throughout California in the cleanup and reuse of abandoned urban railyards. In this regard, the Cornfield is looked to as an example of what can be accomplished at former railyard sites when the right funding, community support, and government decision-making fall into place.

C. *Lessons for the Nation: 2002 Urban Rivers Restoration Initiative*

In the Cornfield situation, the only federal involvement related to the role of HUD funding. To recall, HUD funding initially helped support Majestic Reality's reindustrialization project. HUD's later requirement for a NEPA EIS stalled the project, lending support to the Chinatown Yards Alliance's call for consideration of the parkland alternative.

Since California State Parks took title to the Cornfield in 2001, the federal government has launched a coordinated effort to promote the restoration of the nation's urban rivers. In July of 2002, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) entered into a Memorandum of Understanding (MOU) to facilitate cooperation between

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

the two agencies to address water quality, economic revitalization, and public use of urban rivers.³⁸⁰

The July 2002 MOU led to the creation of the federal Urban Rivers Restoration Initiative (URRI), which in 2003 selected eight pilot projects around the country. The URRI pilot projects are located on the following rivers: Anacostia River (in Washington, D.C. and Maryland); Blackstone and Woonasquatucket Rivers (in Rhode Island and Massachusetts); Elizabeth River (in Virginia); Tres Rios (in Arizona); Passaic River (in New Jersey); Gowanus Canal and Bay (in Brooklyn, New York); Fourche Creek (in Little Rock, Arkansas); and City Creek (in Salt Lake City, Utah).³⁸¹

An analysis of all of the URRI pilot projects is beyond the scope of this article, but there is one URRI pilot—City Creek in Salt Lake City—that merits further discussion because of its similarities to

380. Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of the Army, Subject: Restoration of Degraded Urban Rivers (July 2, 2002) (on file with author).

Many urban reaches of rivers in the United States suffer from contaminated sediments, degraded water quality, and lost habitat. These conditions adversely affect human health, as well as the ecological value of aquatic resources, and limit recreational and other economic uses. Coordination of the activities of the signatory agencies in addressing the problems of aquatic sediment contamination aims to significantly improve public health and the effectiveness of efforts to restore the use and enjoyment of these rivers.

The EPA addresses river sediment contamination through a variety of environmental programs in the Office of Solid Waste and Emergency Response (OSWER), and various programs in the Office of Water (OW). Likewise, the U.S. Army Corps of Engineers (USACE) is involved with numerous river-related activities, including operation and maintenance of navigation channels and harbors, flood control, and ecosystem restoration. The U.S. Army Corps of Engineers is responsible for the safe, reliable, and efficient waterborne transportation systems for the movement of commerce, national security purposes and recreation. The Corps is responsible for 25,000 miles of commercially navigable waterways and 299 deep draft harbors, many of which are located in urban areas.

The above programs can lead to remedial investigation/feasibility studies under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), and USACE environmental reconnaissance and feasibility studies, including those for environmental dredging under the Water Resources Development Act (WRDA) as well as projects addressed by the EPA's Office of Water (OW) under the Clean Water Act, all focused on the same reaches of contaminated urban rivers. Thus, this MOU relates to cooperation between EPA's remediation and water quality activities and the USACE's environmental restoration, navigation, and waterways maintenance activities.

Id. at Art. II.

381. U.S. Envtl. Prot. Agency & U.S. Army Corps of Eng'rs, Urban Rivers Restoration Initiative Fact Sheet (July 2003) (on file with author).

the ongoing Los Angeles River restoration efforts. City Creek is a tributary to the Jordan River. In 1910, two miles of City Creek were encased in a hidden underground channel below North Temple Street in the Salt Lake City downtown area.³⁸² This submersion and encasement destroyed all of the riparian and recreational values of the waterway for this two-mile stretch.³⁸³

Prior to the initiation of the URRI pilot project, EPA had pledged funding to assist in the cleanup and redevelopment of a 650-acre contaminated tract of land located just to the east of the submerged portion of City Creek.³⁸⁴ This effort, known as the Gateway District Brownfields Project, is now being linked with a new Army Corps plan to “daylight” the underground channel.³⁸⁵ The City Creek daylighting project, which is being undertaken pursuant to the aquatic ecosystem restoration section of the Water Resource Development Act of 1996,³⁸⁶ will restore twelve acres of riparian habitat along 7,900 feet of “uncovered” creek.³⁸⁷

Like the Los Angeles River, which was entombed in concrete in the 1930s, the two-mile downtown stretch of Utah’s City Creek had been engineered into non-existence. In certain respects, City Creek’s entombment was even more complete. It was not merely transformed into a concrete eyesore, it was buried from sight altogether. From 1910 onward, it flowed unseen beneath downtown Salt Lake City. By the time the URRI pilot project was announced in 2003, there were few people alive who had ever experienced this stretch of City Creek in its pre-engineered condition.

Yet, like portions of the Los Angeles River, the submerged section of City Creek is now being un-entombed. The catalyst behind City Creek’s transformation parallels that which lay behind the efforts to reclaim the Cornfield as riverside parkland: the growing call for urban greenspace that provides a clearer sense of place, of history, and of relation to the natural world.

IX. CONCLUSION: UPTOWN DOWNRIVER

The tale of the Cornfield is in fact many tales.

382. U.S. Env’tl. Prot. Agency & U.S. Army Corps of Eng’rs, Urban Rivers Restoration Pilot Fact Sheet: City Creek/Gateway District, Utah (2003) (on file with author) [hereinafter City Creek Fact Sheet].

383. *See id.*

384. *See id.*

385. *Id.*

386. *Id.*; *see also* 33 U.S.C. § 2330 (2000).

387. City Creek Fact Sheet, *supra* note 382.

It is the tale of disenfranchised communities, each with long legacies of discrimination, banding together politically to demand urban parkland, in part to vindicate what they perceived as wrongful past seizures of real property.

It is the tale of how effective public interest environmental litigation created the conditions that made possible the acquisition of a parcel for parkland that was on the verge of being redeveloped for industrial purposes.

It is the tale of how a land trust organization, a state environmental agency and a state parks agency came together to forge a strategy that would result in the remediation of a contaminated railyard to turn-key park condition.

It is the tale of how a neglected 1930 blueprint for a city park system has been rediscovered to help create a new urban river greenway.

It is the tale of how the ecological vision of an artist helped ignite public imagination about what an urban river and its adjacent lands were and might become. Lewis MacAdams insisted that “[y]ou can hear laughter from beneath her concrete corset,” and, eventually, people began to listen.³⁸⁸

It is a tale that is Los Angeles-specific but has wider implications. Because all cities have their own tales of discrimination, environmental degradation, and abused natural resources, the Cornfield is not merely some isolated incident. It is a story that resonates more broadly and more deeply. Perhaps this is why in January of 2004 *The New Yorker* published an article on recent efforts to reinvent and reclaim the Los Angeles River.³⁸⁹ In *The New Yorker* piece, former California State Senator Tom Hayden observed that the struggle over the Cornfield and the Los Angeles River is part of the city’s larger struggle to make sense of itself: “We’ve had to organize saving the river around nostalgia, because there is a constituency for nostalgia in Los Angeles that rivals the constituency for amnesia.”³⁹⁰ Hayden’s comment leaves unanswered whether this nostalgia is based on the historical river that once flowed through the city or rather some collective fabrication of the type of river that the city wishes it had but never in fact did.

Perhaps this is also why *The New York Times* recently ran a front

388. From MacAdams’ poem, *To Artesia*, reprinted in MORRISON & LAMONICA, *supra* note 1, at 27.

389. Friend, *supra* note 62.

390. *Id.* at 43.

page story on the City of Los Angeles' strange and evolving relationship to its river. The reporter did much of his research through the unconventional method of paddling a kayak down the river's length:

[T]o travel down it—not walking on its banks but afloat, in a kayak, as it lurches in successive straightaways to the sea—is to see the Los Angeles River as something else. It is still a sump trench, but it is also an uncharted adventure, and at rare times it looks and acts like something living.³⁹¹

There is a sense that the saga of the Cornfield and the Los Angeles River is a metaphor for something. The question is for what.

391. Charlie LeDuff, *Los Angeles by Kayak: Vistas of Concrete Banks*, N.Y. TIMES, Dec. 8, 2003, at A1.